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OF THE

PHILIPPINES

FROM

FEBRUARY 20, 2017 TO MARCH 7, 2017

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MANILA
2018

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 198120. February 20, 2017]

MERCEDES S. GATMAYTAN, *petitioner, vs.* **FRANCISCO DOLOR (SUBSTITUTED BY HIS HEIRS) and HERMOGENA DOLOR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; EFFECTS OF FINAL AND EXECUTORY JUDGMENT.— It is just as basic that a judgment can no longer be disturbed, altered, or modified as soon as it becomes final and executory; "nothing is more settled in law." Once a case is decided with finality, the controversy is settled and the matter is laid to rest. x x x Once a judgment becomes final, the court or tribunal loses jurisdiction, and any modified judgment that it issues, as well as all proceedings taken for this purpose are null and void. This elementary rule finds basis in "public policy and sound practice that at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law." Basic rationality dictates that there must be an end to litigation. Any contrary posturing renders justice inutile, reducing to futility the winning party's capacity to benefit from the resolution of a case.

2. ID.; ID.; MOTION FOR RECONSIDERATION; WHERE THE PETITIONER FAILED TO PROVE THE SPECIFIC DATE IN WHICH SERVICE OF THE NOTICE OF THE

DECISION UPON HER COUNSEL WAS ACTUALLY MADE, IT CANNOT BE SAID THAT HER MOTION FOR RECONSIDERATION WAS TIMELY FILED; EFFECT.— [P]etitioner failed to discharge her burden of proving the specific date – allegedly June 1, 2006 – in which service upon her counsel's updated address was actually made. Having failed to establish the reckoning point of the period for filing her Motion for Reconsideration, we cannot sustain the conclusion that petitioner insists on, and which is merely contingent on this reckoning point: we cannot conclude that her Motion for Reconsideration was timely filed. Having failed to discharge her burden of proof, we are constrained to deny her Petition. x x x [P]etitioner's failure to attach the correct annexes to her Petition could be attributed to mere inadvertence or negligence. We shudder to think however, that this could just as possibly be an indication of how petitioner makes an allegation but wilfully refuses to produce proof – indeed, suppresses proof – of what she alleges. Worse, her explicit reference to a Motion for Reconsideration filed with the Regional Trial Court, only to present something entirely different, could indicate an attempt to mislead this Court into blindly accepting her allegations. As with the missing receipt however, regardless of whether petitioner failed to attach it deliberately or out of mere inadvertence, what remains is that petitioner failed to prove what she claimed. Lacking evidentiary basis, petitioner's contention that service upon her counsel's updated and correct address was made only on June 1, 2006 cannot be sustained. As her plea for relief hinges on this singular detail, we are constrained to deny such. Bereft of any avenue for revisiting the Regional Trial Court's March 27, 2006 Decision, its findings and ruling must stand.

APPEARANCES OF COUNSEL

Valdez Domondon & Associates for petitioner.
Maximo Jacob Rivera for respondents.

D E C I S I O N

LEONEN, *J.*:

When a party's counsel serves a notice of change in address upon a court, and the court acknowledges this change, service of papers, processes, and pleadings upon the counsel's former address is ineffectual. Service is deemed completed only when made at the updated address. Proof, however, of ineffectual service at a counsel's former address is not necessarily proof of a party's claim of when service was made at the updated address. The burden of proving the affirmative allegation of when service was made is distinct from the burden of proving the allegation of where service was or was not made. A party who fails to discharge his or her burden of proof is not entitled to the relief prayed for.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure, praying that the assailed March 24, 2011 Decision[2] and August 9, 2011 Resolution[3] of the Court of Appeals, Sixth Division, in CA-G.R. CV No. 88709 be reversed and set aside and that the Court of Appeals be directed to resolve petitioner Mercedes S. Gatmaytan's (Gatmaytan) appeal on the merits.

In its assailed March 24, 2011 Decision, the Court of Appeals dismissed Gatmaytan's appeal, noting that the assailed March 27, 2006 Decision[4] of the Quezon City Regional Trial Court,

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[1] *Rollo*, pp. 3–37.

[2] *Id*. at 38–47. The Decision was promulgated on March 24, 2011, and was penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Juan Q. Enriquez, Jr., and Ramon M. Bato, Jr. of the Sixth Division, Court of Appeals, Manila.

[3] *Id*. at 49–50. The Resolution was penned by Associate Justice Florito S. Macalino, and concurred in by Associate Justices Juan Q. Enriquez, Jr., and Ramon M. Bato, Jr. of the Sixth Division, Court of Appeals, Manila.

[4] *Id*. at 52–67. The Decision was penned by Judge Ramon A. Cruz of Branch 223, Regional Trial Court, Quezon City.

Branch 223, had already attained finality. In its assailed August 9, 2011 Resolution, the Court of Appeals denied Gatmaytan's Motion for Reconsideration.

The Regional Trial Court's March 27, 2006 Decision resolved an action for reconveyance against Gatmaytan and in favor of the plaintiff spouses, now respondents Francisco and Hermogena Dolor (Dolor Spouses).

In a Complaint for Reconveyance of Property and Damages filed with the Quezon City Regional Trial Court, the Dolor Spouses alleged that on February 17, 1984, they, as buyers, and Manuel Cammayo (Cammayo), as seller, executed a Deed of Sale over a 300 square meter parcel of land located in Novaliches, Quezon City.[5] This 300 square meter parcel was to be segregated from a larger landholding.[6]

The Deed of Sale stated that, of the total consideration of ₱30,000.00, half (i.e., ₱15,000.00) would be paid upon the execution of the Deed.[7] The balance of ₱15,000.00 would be paid upon the release and delivery of the registrable Deed of Sale and of the Transfer Certificate of Title (TCT) covering the segregated portion.[8]

Per a "Kasunduan"[9] and based on a receipt dated May 18, 1984,[10] the Dolor Spouses were able to pay the entire consideration of ₱30,000.00 even before the TCT was delivered to them.[11] As such, on May 16, 1986, a second Deed of Sale, in lieu of the first, was executed by Cammayo in favor of Francisco Dolor.[12] This Deed no longer referenced the condition

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[5] *Id*. at 39.

[6] *Id*. at 39.

[7] *Id*.

[8] *Id*.

[9] *Id.*

[10] *Id*. at 53.

[11] *Id*.

[12] *Id*. at 39.

for payment of the ₱15,000.00 balance but merely stated that the lot was being sold "for and in consideration of the sum of THIRTY THOUSAND PESOS[.]"[13]

The Dolor Spouses claimed that, on March 27, 1989, they authorized Cecilio T. Manzanilla and his family to occupy the lot and to construct a house on it.[14]

To the Dolor Spouses' surprise, in October 1999, petitioner Gatmaytan filed an ejectment suit against Encarnacion Vda. De Manzanilla and her family.[15] Gatmaytan anchored her ejectment suit on her claim that she was the registered owner of the lot.[16]

In response, the Dolor Spouses filed against Gatmaytan and Cammayo the Complaint for Reconveyance of Property and Damages, which gave rise to the present Petition.[17]

In her Answer, Gatmaytan claimed that the Deed of Sale between the Dolor Spouses and Cammayo was never registered.[18] She explained that the lot was a portion of a larger 5,001 square meter parcel, which Cammayo had earlier conveyed to her.[19] She further averred that the Dolor Spouses' action was barred by prescription as they failed to enforce their rights for 11 years.[20]

In his Answer, Cammayo acknowledged executing a Deed of Sale in favor of the Dolor Spouses.[21] He added that he entered into an agreement with Gatmaytan for the latter to defray the

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[13] *Id.* at 53.

[14] *Id.* at 40.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

expenses for the payment of real estate taxes, and the segregation of the title covering the portion sold to the Dolor Spouses from the larger, 5,001 square meter, parcel.[22] Per this agreement, Gatmaytan was to have the larger parcel titled in her name with the condition that Gatmaytan would deliver to the Dolor Spouses the segregated portion and TCT covering it.[23]

On March 27, 2006, the Quezon City Regional Trial Court, Branch 223 rendered a Decision ordering Gatmaytan to convey the lot to the Dolor Spouses.[24]

On June 16, 2006, Gatmaytan filed her Motion for Reconsideration,[25] which was denied by the trial court on August 28, 2006.[26]

Gatmaytan then filed an Appeal with the Court of Appeals.

In its assailed March 24, 2011 Decision,[27] the Court of Appeals, Sixth Division, dismissed Gatmaytan's Appeal. It ruled that the Regional Trial Court's March 27, 2006 Decision had already attained finality as Gatmaytan filed her Motion for Reconsideration beyond the requisite 15-day period. This ruling was anchored on the following factual observations:

First, the Regional Trial Court's Decision was rendered on March 27, 2006;[28]

Second, per the registry return receipt attached to the back portion of the last page of the Regional Trial Court's Decision, Gatmaytan's counsel, Atty. Raymond Palad (Atty. Palad), received a copy of the same Decision on April 14, 2006;[29] and

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[22] *Id*. at 41.

[23] *Id*.

[24] *Id.* at 52–67.

[25] *Id*. at 42.

[26] *Id*. at 42–43.

[27] *Id*. at 38–47.

[28] *Id*. at 45.

[29] *Id*. at 45–46.

Finally, Gatmaytan filed her Motion for Reconsideration only on June 16, 2006.[30]

Gatmaytan then filed a Motion for Reconsideration.[31]

In its assailed August 9, 2011 Resolution,[32] the Court of Appeals denied Gatmaytan's Motion for Reconsideration. It emphasized that the Receipt at the back of the last page of the Regional Trial Court's Decision indicated that a copy of the same Decision was received by a certain Maricel Luis (Luis), for and on behalf of Atty. Palad, on April 14, 2006.[33] The Court of Appeals added that previous orders of the Regional Trial Court were likewise received by Luis, and that Luis' authority to receive for Atty. Palad had never been questioned.[34]

Gatmaytan filed the Present Petition.[35]

Gatmaytan insists that the Regional Trial Court's March 27, 2006 Decision has not attained finality as the April 14, 2006 service was made to her counsel's former address (at No. 117 West Avenue, Quezon City) as opposed to the address (at Unit 602, No. 42 Prince Jun Condominium, Timog Avenue, Quezon City) that her counsel indicated in a June 8, 2004 Notice of Change of Address[36] filed with the Regional Trial Court. Gatmaytan adds that the Regional Trial Court noted the change of address in an Order[37] of the same date, and directed that, from then on, service of papers, pleadings, and processes was to be made at her counsel's updated address at Unit 602, No. 42 Prince Jun Condominium, Timog Avenue, Quezon City.[38]

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[30] *Id*. at 45.

[31] *Id*. at 131–138.

[32] *Id*. at 49–50.

[33] *Id*.

[34] *Id.* at 50.

[35] *Id*. at 3–37.

[36] *Id*. at 141–142.

[37] *Id*. at 143.

[38] *Id.* at 25.

In support of the present Petition, Gatmaytan attached a copy of the Regional Trial Court's March 27, 2006 Decision.[39] On its last page is a typewritten text, which indicates that a copy of the same Decision was furnished to:

> Atty. Raymond Palad
> Counsel for Gatmaytan
> No. 117 West Ave., Quezon City[40]

The same last page of the copy of the Regional Trial Court's Decision indicates, in handwritten text:

> Mailed also to
> Atty. Raymond Palad at:
> Unit 602, No. 42 Prince Jun Condominium
> Timog Ave., Quezon City[41]

For resolution is the sole issue of whether the Regional Trial Court's March 27, 2006 Decision has already attained finality thus, precluding the filing of petitioner Mercedes S. Gatmaytan's appeal with the Court of Appeals.

I

It is elementary that "[a]ppeal is not a matter of right but a mere statutory privilege."[42] As such, one who wishes to file an appeal "must comply with the requirements of the rules, failing in which the right to appeal is lost."[43]

It is just as basic that a judgment can no longer be disturbed, altered, or modified as soon as it becomes final and executory;[44]

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[39] *Id*. at 52–67.

[40] *Id*. at 67.

[41] *Id*.

[42] *BPI Family Savings Bank v. Pryce Gases,* 668 Phil. 206, 215 (2011) [Per *J*. Carpio, Second Division].

[43] *Id.* citing *Stolt-Nielsen Services, Inc. v. NLRC*, 513 Phil. 642, 653 (2005) [Per *J*. Garcia, Third Division].

[44] *Industrial Timber Corp. v. Ababon*, 515 Phil. 805, 816 (2006) [Per *J*. Ynares-Santiago, First Division].

"nothing is more settled in law."[45] Once a case is decided with finality, the controversy is settled and the matter is laid to rest.[46] Accordingly,

> [a final judgment] may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.[47]

Once a judgment becomes final, the court or tribunal loses jurisdiction, and any modified judgment that it issues, as well as all proceedings taken for this purpose are null and void.[48]

This elementary rule finds basis in "public policy and sound practice that at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law."[49] Basic rationality dictates that there must be an end to litigation. Any contrary posturing renders justice inutile, reducing to futility the winning party's capacity to benefit from the resolution of a case.[50]

In accordance with Rule 36, Section 2 of the 1997 Rules of Civil Procedure, unless a Motion for Reconsideration is timely filed, the judgment or final order from which it arose shall become final:

> Section 2. Entry of Judgments and Final Orders. — *If no appeal or motion for new trial or reconsideration is filed within the time provided*

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[45] *Filipro, Inc. v. Permanent Savings & Loan Bank*, 534 Phil. 551, 560 (2006) [Per *J.* Ynares-Santiago, First Division].

[46] *Siy v. National Labor Relations Commission,* 505 Phil. 265, 273 (2005) [Per *J.* Corona, Third Division].

[47] *Filipro, Inc. v. Permanent Savings & Loan Bank*, 534 Phil. 551, 560 (2006) [Per *J.* Ynares-Santiago, First Division].

[48] *Equatorial Realty Development v. Mayfair Theater, Inc*., 387 Phil. 885, 895 (2000) [Per *J.* Pardo, First Division].

[49] *Filipro, Inc. v. Permanent Savings & Loan Bank,* 534 Phil. 551, 560 (2006) [Per *J.* Ynares-Santiago, First Division].

[50] *Id*.

in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment or final order has become final and executory. (Emphasis supplied)

In turn, Rule 37, Section 1, in relation to Rule 41, Section 3 of the 1997 Rules of Civil Procedure, allows for 15 days from notice of a judgment or final order within which a Motion for Reconsideration may be filed.

Rule 37, Section 1 reads:

Section 1. Grounds of and Period for Filing Motion for New Trial or Reconsideration. — *Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial* for one or more of the following causes materially affecting the substantial rights of said party:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or

(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered, and produced at the trial, and which if presented would probably alter the result.

Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law. (Emphasis supplied)

For its part, Rule 41, Section 3 reads:

Section 3. Period of Ordinary Appeal. — *The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from*. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed. (Emphasis supplied)

II

Reckoning the date when a party is deemed to have been given notice of the judgment or final order subject of his or her Motion for Reconsideration depends on the manner by which the judgment or final order was served upon the party himself or herself.

When, however, a party is represented and has appeared by counsel, service shall, as a rule, be made upon his or her counsel. As Rule 13, Section 2 of the 1997 Rules of Civil Procedure provides:

Section 2. Filing and Service, Defined. —

. . . . . .

Service is the act of providing a party with a copy of the pleading or paper concerned. *If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court.* Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side. (Emphasis supplied)

In *Delos Santos v. Elizalde*,[51] this Court explained the reason for equating service upon counsels with service upon the parties themselves:

To reiterate, service upon the parties' counsels of record is tantamount to service upon the parties themselves, but service upon the parties themselves is not considered service upon their lawyers. The reason is simple—the parties, generally, have no formal education or knowledge of the rules of procedure, specifically, the mechanics of an appeal or availment of legal remedies; thus, they may also be unaware of the rights and duties of a litigant relative to the receipt of a decision. More importantly, it is best for the courts to deal only

[51] 543 Phil. 12 (2007) [Per *J.* Velasco, Second Division].

with one person in the interest of orderly procedure—either the lawyer retained by the party or the party him/herself if s/he does not intend to hire a lawyer.[52]

Rule 13, Section 9 of the 1997 Rules of Civil Procedure provides for three (3) modes of service of judgments or final orders: first, personal service; second, service by registered mail; and third, service by publication. It reads:

> Section 9. Service of Judgments, Final Orders or Resolutions. — Judgments, final orders or resolutions shall be served either personally or by registered mail. When a party summoned by publication has failed to appear in the action, judgments, final orders or resolutions against him shall be served upon him also by publication at the expense of the prevailing party.

Rule 13, Section 10 specifies when the first two (2) modes – personal service and service by registered mail – are deemed completed, and notice upon a party is deemed consummated:

> Section 10. Completeness of Service. — Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of ten (10) days after mailing, unless the court otherwise provides. *Service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever date is earlier.* (Emphasis supplied)

III

While petitioner filed a Motion for Reconsideration of the Regional Trial Court's March 27, 2006 Decision,[53] there is a dispute as to the date from which the 15-day period for filing a Motion for Reconsideration must be reckoned. That is, there is a dispute as to when petitioner was given notice of the Decision. The Court of Appeals refused to entertain petitioner's appeal reasoning that the judgment appealed from has attained finality.[54]

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[52] *Id*. at 26.

[53] *Rollo,* p. 42.

[54] *Id*. at 45–46.

This, according to it, is because petitioner belatedly filed her Motion for Reconsideration on June 16, 2006 considering that her counsel supposedly received notice of it on April 14, 2006.[55] Petitioner insists that the Motion was timely filed, her counsel having received notice of it only on June 1, 2006.[56]

Petitioner claims that the Court of Appeals wrongly reckoned service on April 14, 2006 as the service made on this date was upon her counsel's former address.[57] She adds that service upon her counsel's updated and correct address was made only on June 1, 2006.[58] Petitioner points out that her counsel filed with the Regional Trial Court a Notice of Change of Address. She further emphasizes that the Regional Trial Court acknowledged this change of address and issued an Order stating that, from then on, service shall be made upon the updated address. [59]

We sustain petitioner's position that the service made on her counsel's former address was ineffectual. We find however, that petitioner failed to discharge her burden of proving the specific date – allegedly June 1, 2006 – in which service upon her counsel's updated address was actually made. Having failed to establish the reckoning point of the period for filing her Motion for Reconsideration, we cannot sustain the conclusion that petitioner insists on, and which is merely contingent on this reckoning point: we cannot conclude that her Motion for Reconsideration was timely filed. Having failed to discharge her burden of proof, we are constrained to deny her Petition.

IV

Indeed, petitioner's counsel filed with the Regional Trial Court a Notice of Change of Address dated June 8, 2004. She

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[55] *Id*. at 26.

[56] *Id.*

[57] *Id*. at 27.

[58] *Id.*

[59] *Id*. at 25.

attached this Notice to her Petition as its Annex "F." This Notice states:

NOTICE OF CHANGE OF ADDRESS

THE BRANCH CLERK OF COURT
Regional Trial Court, Branch 223, Quezon City

GREETINGS:

Undersigned counsel hereby manifest (sic) that ***effective June 8, 2004,*** their office address shall be at:

PALAD, LAURON & PALAD LAW FIRM
UNIT 602, NO. 42 PRINCE JUN
CONDOMINIUM, TIMOG AVENUE
QUEZON CITY

Quezon City for Manila, June 8, 2004

PALAD, LAURON &
PALAD LAW FIRM

By:

RAYMUND. P. PALAD (sgd)
Counsel for Defendant Gatmaytan
PTR No. 52151545 / 02-17-04 / QC
IBP No. 594509 / 01-10-04 / Kal. City
Roll of Attorneys No. 39140 / 3-15-94
Page No. 328, Book No. XVI[60]

Conformably, the Regional Trial Court issued an Order of the same date, noting the change of address and stating that service of paper, processes and pleadings shall, from then on, be made on petitioner's counsel's updated address:

O R D E R

The Notice of Change Address (sic) dated June 8, 2004, filed by Atty. Raymund P. Palad, is **NOTED.** Let therefore said counsel be

[60] *Id*. at 141.

furnished with Orders and other papers coming from this court at his new address at Unit 602, No. 42 Prince Jun Condominium, Timog Avenue, Quezon City.

SO ORDERED.

Quezon City, Philippines, June 8, 2004.

RAMON A. CRUZ
Presiding Judge[61]

By its own Order, the Regional Trial Court bound itself to make service at petitioner's counsel's updated address at Unit 602, No. 42 Prince Jun Condominium, Timog Avenue, Quezon City. Thus, the service of its March 27, 2006 Decision at petitioner's counsel's former address at No. 117 West Avenue, Quezon City was ineffectual.

Service, however, was also made at petitioner's counsel's updated address. Petitioner herself acknowledges this. Precisely, it is her contention that the 15-day period in which she may file her Motion for Reconsideration must be reckoned from the date when service at this updated address was made. This date, she alleges, was June 1, 2006.

Petitioner is correct in saying that the 15-day period must be reckoned from the date when service was made at the updated address. To hold otherwise would be to condone a glaring violation of her right to due process. It is to say that she might as well not be given notice of the Decision rendered by the Regional Trial Court. In this respect, we sustain petitioner.

We, however, find ourselves unable to sustain her claim that the 15-day period must be reckoned from June 1, 2006.

V

As basic as the previously-discussed principles on appeal as a statutory privilege, finality of judgments, and service of papers, is the principle that "a party who alleges a fact has the burden of proving it."[62] A mere allegation will never suffice: "a mere

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[61] *Id*. at 143.

[62] *Dela Llana v. Biong,* G.R. No. 182356, December 4, 2013, 711 SCRA 522, 534 [Per *J.* Brion, Second Division].

allegation is not evidence, and he who alleges has the burden of proving the allegation with the requisite quantum of evidence."[63] Logically, a party who fails to discharge his or her burden of proof will not be entitled to the relief prayed for.

This court's grant of relief to petitioner is contingent on her ability to prove two (2) points: first, that the Regional Trial Court was bound to make service at her counsel's updated address; and second, that service at this address was made on June 1, 2006, and not on an earlier date. While petitioner has successfully shown that service to her counsel's former address was ineffectual, she failed to prove that service on her counsel's updated address was made only on June 1, 2006.

Petitioner attached the following annexes in support of the Petition she filed with this court:

a. Annex "A" – a certified true copy of the Court of Appeals' assailed March 24, 2011 Decision[64]

b. Annex "B" – a certified true copy of the Court of Appeals' assailed August 9, 2011 Resolution[65]

c. Annex "C" – a photocopy of the Regional Trial Court's March 27, 2006 Decision[66]

d. Annex "D" – a copy of the Brief she filed before the Court of Appeals[67]

e. Annex "E" – a copy of the Motion for Reconsideration she filed before the Court of Appeals[68]

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[63] *Clado-Reyes v. Limpe*, 579 Phil. 669, 677 (2008) [Per *J*. Quisumbing, Second Division].

[64] *Rollo,* pp. 38–48.

[65] *Id*. at 49–51.

[66] *Id*. at 52–67.

[67] *Id*. at 68–130.

[68] *Id.* at 131–140.

f. Annex "F" – a copy of the Notice of Change of Address filed with the Regional Trial Court by her counsel[69]

g. Annex "G" – a photocopy of the Regional Trial Court's June 8, 2004 Order[70]

h. Annex "H" – a copy of the respondents' Comment / Opposition to her Formal Offer of Evidence filed with the Regional Trial Court[71]

i. Annex "I" – a copy of respondents' Memorandum filed with the Regional Trial Court[72]

Annexes "C," "F," "G," "H," and "I" are crucial to petitioner's claim that service of the March 27, 2006 Decision to her counsel's former address was ineffectual. In addition to what we previously discussed was the importance of the Notice of Change of Address and the ensuing Order of the Regional Trial Court. Annexes "H" and "I" indicate that the respondents themselves started serving copies of their submissions and pleadings with petitioner's counsel's updated address, in conformity with the Regional Trial Court's June 8, 2004 Order.

None, however, of the documents that petitioner adduced before this Court attests to the truth of her allegation that service to her counsel's new and correct address was made only on June 1, 2006.

In her Petition, petitioner alluded to a "'[r]eceipt' attached at the back of the [Regional Trial Court's March 27, 2006] decision."[73] No copy of this receipt, however, was produced by petitioner. In all of the 16 pages of the Regional Trial Court's Decision that petitioner submitted as Annex "C" of her Petition, the only references made to the mailing of the Decision to her

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[69] *Id*. at 141–142.

[70] *Id*. at 143.

[71] *Id.* at 144–146.

[72] *Id.* at 147–158.

[73] *Id.* at 23.

counsel are: first, the previously mentioned typewritten and handwritten texts indicating mailing to both her counsel's former address and updated address; and second, a stamped notation that stated:

> RELEASED BY REGISTERED MAIL
> DATE 3/31/06 By: [signature appears][74]

Neither of these attests to June 1, 2006 as the date of delivery to her counsel.

In *Cortes v. Valdellon*,[75] this Court noted the following as acceptable proofs of mailing and service by a court to a party: (1) certifications from the official Post Office record book and/or delivery book; (2) the actual page of the postal delivery book showing the acknowledgment of receipt; (3) registry receipt; and (4) return card.[76]

Petitioner could have produced any of these documents or other similar proof to establish her claim. She did not. All she has relied on is her bare allegation that delivery was made on June 1, 2006. It is as though belief in this allegation necessarily follows from believing her initial claim that service to her counsel's former address was ineffectual.

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[74] *Id*. at 67.

[75] 162 Phil. 745 (1976) [Per *J*. Teehankee, First Division].

[76] *Id*. at 751–753.

Said the court:

> The certifications from the official record book and delivery book of the Post Office together with the very page of the delivery book showing the acknowledgment of receipt on January 27, 1972 of the registered mail matter as per signature of respondents' counsel's authorized clerk are the direct and primary evidence of completion of service, even more so than the registry receipt and return card which the Rule accepts as such proof of service for practical purposes (since it would be too cumbersome to require similar detailed certifications and exhibits as those presented by petitioner as proof of service for each of the tens if not hundreds of thousands of registered mail matter involved in court proceedings).

Petitioner's own, voluntary reference to a "'[r]eceipt' attached at the back of the [Regional Trial Court's March 27, 2006] decision"[77] suggests that she herself had access to this receipt and could have presented a copy of it to this Court. The fact that she did not present it implies negligence, or worse, calls into operation the presumption "[t]hat evidence willfully suppressed would be adverse if produced."[78] Regardless, it remains that she failed to prove what she claimed.

Petitioner similarly alludes to the Regional Trial Court's supposed realization of its error and subsequent action to correct its mistake:

> On account of this mistake and realizing that Atty. Raymond Palad only received a copy of the decision on 01 June 2006 (*see Affidavit of Atty. Raymond Palad, attached to Motion for Reconsideration, Annex "E", hereof*), the court *a quo* resolved the motion for reconsideration on the merits and gave due course to Gatmaytan's Notice of Appeal. The Hon. Court of Appeals – Sixth Division should have done the same thing.[79] (Emphasis in the original)

As with the "receipt" she had earlier adverted to, petitioner could just as easily have presented to this Court a copy of the Regional Trial Court's Resolution, which supposedly resolved her Motion for Reconsideration on the merits as opposed, presumably, to denying it on the technical ground that it was filed beyond the 15-day period. This would supposedly reveal that the Regional Trial Court realized its mistake and corrected it. She did not present this.

Instead of producing the Regional Trial Court's Resolution, petitioner adduced a copy of a Motion for Reconsideration. Even then, what she annexed was a ***not a copy of the Motion for Reconsideration she filed with the Regional Trial Court*** *but a copy of the Motion for Reconsideration dated April 12,*

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[77] *Id.* at 23.

[78] RULES OF COURT, Rule 131, Sec 3 (e).

[79] *Rollo*, p. 26.

2011, which she filed with the Court of Appeals. This was a Motion for Reconsideration she filed in response to the presently assailed March 24, 2011 Court of Appeals Decision, not to the Regional Trial Court's March 27, 2006 Decision.

Again, petitioner's failure to attach the correct annexes to her Petition could be attributed to mere inadvertence or negligence. We shudder to think however, that this could just as possibly be an indication of how petitioner makes an allegation but wilfully refuses to produce proof – indeed, suppresses proof – of what she alleges. Worse, her explicit reference to a Motion for Reconsideration filed with the Regional Trial Court, only to present something entirely different, could indicate an attempt to mislead this Court into blindly accepting her allegations.

As with the missing receipt however, regardless of whether petitioner failed to attach it deliberately or out of mere inadvertence, what remains is that petitioner failed to prove what she claimed.

Lacking evidentiary basis, petitioner's contention that service upon her counsel's updated and correct address was made only on June 1, 2006 cannot be sustained. As her plea for relief hinges on this singular detail, we are constrained to deny such. Bereft of any avenue for revisiting the Regional Trial Court's March 27, 2006 Decision, its findings and ruling must stand.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**, the assailed March 24, 2011 Decision and August 9, 2011 Resolution of the Court of Appeals, Sixth Division, in CA-G.R. CV No. 88709 are **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), *Peralta, Mendoza,* and *Jardeleza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 208093. February 20, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SALIM ISMAEL *y* RADANG,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ELEMENTS OF ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; IN BOTH CASES, IT IS OF UTMOST IMPORTANCE THAT THE INTEGRITY AND IDENTITY OF THE SEIZED DRUG, WHICH CONSTITUTES THE *CORPUS DELICTI*, MUST HAVE BEEN DULY PRESERVED.— To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused. On the other hand, for illegal possession of dangerous drugs, the following elements must be established: "[1] the accused was in possession of dangerous drugs; [2] such possession was not authorized by law; and [3] the accused was freely and consciously aware of being in possession of dangerous drugs." In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. "The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed."

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; FAILURE TO COMPLY WITH THE REQUIREMENTS OF MARKING, INVENTORY, AND TAKING OF PHOTOGRAPHS OF

THE SEIZED DRUGS WITHOUT OFFERING AN EXPLANATION FOR ITS NON-COMPLIANCE IS FATAL; THE VERY IDENTITY OF THE SEIZED DRUGS BECAME HIGHLY QUESTIONABLE; THE COURT ACQUITS THE ACCUSED BASED ON REASONABLE DOUBT.— Due to the apparent breaks in the chain of custody, it was possible that the seized item subject of the sale transaction was switched with the seized items subject of the illegal possession case. This is material considering that the imposable penalty for illegal possession of *shabu* depends on the quantity or weight of the seized drug. Aside from the failure to mark the seized drugs immediately upon arrest, the arresting officers also failed to show that the marking of the seized drugs was done in the presence of the appellant. This requirement must not be brushed aside as a mere technicality. It must be shown that the marking was done in the presence of the accused to assure that the identity and integrity of the drugs were properly preserved. Failure to comply with this requirement is fatal to the prosecution's case. The requirements of making an inventory and taking of photographs of the seized drugs were likewise omitted without offering an explanation for its non-compliance. This break in the chain tainted the integrity of the seized drugs presented in court; the very identity of the seized drugs became highly questionable. x x x In sum, we find that the prosecution failed to: (1) overcome the presumption of innocence which appellant enjoys; (2) prove the *corpus delicti* of the crime; (3) establish an unbroken chain of custody of the seized drugs; and (4) offer any explanation why the provisions of Section 21, RA 9165 were not complied with. This Court is thus constrained to acquit the appellant based on reasonable doubt.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

This is an appeal from the June 14, 2013 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR H.C. No. 00902, which affirmed the August 31, 2010 Judgment[2] of Branch 12, Regional Trial Court (RTC) of Zamboanga City in Criminal Case Nos. 5021 (19952) and 5022 (19953), finding appellant Salim Ismael *y* Radang (Salim) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. 9165 (RA 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002. In Criminal Case No. 5021 (19952), Salim was sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 for illegal sale of *shabu* under Section 5, Article II of RA 9165; and in Criminal Case No. 5022 (19953), he was sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day to fifteen (15) years and pay a fine of ₱300,000.00 for illegal possession of *shabu* under Section 11 of the said law.

Factual Antecedents

Salim was charged with violation of Sections 5 and 11, Article II of RA 9165 for selling and possessing methamphetamine hydrochloride (*shabu*). The twin Informations[3] instituted therefor alleged:

In Criminal Case No. 5021 (19952)

That on or about August 25, 2003, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, deliver, transport, distribute or give away to another any dangerous drug,

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[1] CA *rollo,* pp. 101-109; penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Marie Christine Azcarraga-Jacob and Edward B. Contreras.

[2] Records, pp. 88-101; penned by Presiding Judge Gregorio V. De La Pena, III.

[3] *Id.* at 1-2.

did then and there willfully, unlawfully and feloniously, sell and deliver to SPO1 Roberto Alberto Santiago, PNP, Culianan Police Station, who acted as poseur buyer, one (1) small size transparent plastic pack containing white crystalline substance as certified to by PO1 Rodolfo Dagalea Tan as METHAMPHETAMINE HYDROCHLORIDE (SHABU), said accused knowing the same to be a dangerous drug.

CONTRARY TO LAW.

In Criminal Case No. 5022 (19953)

That on or about August 25, 2003, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control, two (2) small size heat-sealed transparent plastic packs each containing white crystalline substance as certified to by PO1 Rodolfo Dagalea Tan as METHAMPHETAMINE HYDROCHLORIDE (SHABU), said accused knowing the same to be a dangerous drug.

CONTRARY TO LAW.

Arraigned on July 6, 2004, Salim, assisted by counsel, pleaded not guilty to both charges. Upon termination of the joint pre-trial conference, trial on the merits followed.

Version of the Prosecution

Culled from the records[4] were the following operative facts:

On August 25, 2003, at around 1:00 o'clock in the afternoon, a confidential informant reported to SPO4 Menardo Araneta [SPO4 Araneta], Chief of the Intelligence Division of the Culianan Police Station 4 [at Zamboanga City], that a certain "Ismael Salim" was engaged in selling *shabu* at *Barangay* Talabaan near the Muslim [c]emetery [in that city].

To verify the report, SPO4 Araneta instructed the said informant to [monitor] the area. After the informant confirmed that the said Ismael Salim was indeed selling illegal drugs in the reported area, SPO4 Araneta formed a buy-bust team composed of SPO1 Enriquez,

[4] CA *rollo,* pp. 103-104.

SPO1 Eduardo N. Rodriguez (SPO1 Rodriguez), SPO1 Roberto A. Santiago (SPO1 Santiago) and PO2 Rodolfo Dagalea Tan (PO2 Tan). It was then agreed that SPO1 Santiago would act as poseur buyer with SPO1 Rodriguez as back-up. For the purpose, SPO4 Araneta gave SPO1 Santiago a [₱100] bill bearing Serial No. M419145 as marked money [to be used] in the buy-bust operation.

Upon arrival at *Barangay* Talabaan, the team parked their service vehicle along the road. SPO1 Santiago, the confidential informant and SPO1 Rodriguez alighted from the vehicle and walked towards the [area fronting] the Muslim cemetery. As they approached the area, the informant pointed to a man wearing a brown T-shirt and black short pants with white towel around his neck [whom he identified] as appellant Ismael Salim, the target of the operation.

SPO1 Santiago then [walked] towards appellant and [told] the latter that he [wanted] to buy *shabu*; to this appellant replied "how much?" SPO1 Santiago answered that he [wanted to buy ₱100.00 worth of the *shabu*, and gave appellant] the ₱100.00 marked money; [whereupon appellant] took from his left pocket one plastic sachet containing a white crystalline substance [which he] handed over to SPO1 Santiago.

Upon seeing the exchange, SPO1 Rodriguez, who was positioned [some 10] meters away, rushed in and arrested appellant[.] SPO1 Rodriguez made a precautionary search of appellant's body for any concealed weapon[, and found none]. Instead, SPO1 Rodriguez found, tucked inside [appellant's left front pocket the ₱100.00] marked money and two (2) more plastic sachets containing white crystalline substance wrapped in a golden cigarette paper.

The police officers then brought appellant to the Culianan Police Station [in Zamboanga City] with SPO1 Santiago keeping personal custody of the items confiscated from [him]. At the [police] station, the plastic sachet containing white crystalline substance subject of the buy-bust operation, the two (2) plastic sachets also containing white crystalline substance[, and the ₱100.00] marked money bearing Serial No. M419145 recovered from appellant's left pocket, were respectively turned over by SPO1 Santiago and SPO1 Rodriguez to the Desk Officer, PO3 Floro Napalcruz [PO3 Napalcruz], who likewise turned [these over] to the Duty Investigator, [PO2 Tan]. PO2 Tan then placed his initial "RDT" on the items recovered from appellant.

PO2 Tan also prepared a request to the PNP Regional Crime Laboratory 9, [at] Zamboanga City for laboratory examination of the

plastic sachet containing the white crystalline substance subject of the sale between appellant and SPO1 Santiago, and the other two (2) plastic sachet[s] found inside appellant's pocket by SPO1 Rodriguez.

After conducting qualitative examination on the said specimens, Police Chief Inspector [PCI] Mercedes D. Diestro, Forensic Chemist [Forensic Chemist Diestro], issued Chemistry Report No. D-367-2003 dated August 25, 2003, finding [the above-mentioned] plastic sachets positive for Methamphetamine Hydrochloride (*shabu),* a dangerous drug.

Version of the Defense

The defense presented appellant as its lone witness. Appellant denied both charges; he denied selling *shabu* to SPO1 Santiago, just as he denied having *shabu* in his possession when he was arrested on August 25, 2003.

According to appellant, on August 25, 2003, he went to a store to buy cellphone load so that he could call his wife. After buying the cellphone load, he went back to his house on board a *sikad-sikad,* a bicycle-driven vehicle with a sidecar. When he was about 160 meters away from the Muslim cemetery in *Barangay* Talabaan, he was arrested by five persons in civilian attire who introduced themselves as police officers. The police officers conducted a search on his person but did not find any dangerous drugs. Thereafter, he was brought to Culianan Police Station where he was detained for two days. Appellant insisted that he never sold *shabu* to the police officers who arrested him. He said that the first time he saw the alleged *shabu* was when it was presented before the trial court. He denied that the police officers had confiscated a cellular phone from him. He also asserted that all these police officers took away from him was his money and that he had never met the said police officers prior to his arrest.

Ruling of the Regional Trial Court

On August 31, 2010, the RTC of Zamboanga City, Branch 12 rendered its Judgment finding appellant guilty beyond reasonable doubt of having violated Sections 5 and 11, Article II of RA 9165.

The RTC gave full credence to the testimonies of SPO1 Santiago and SPO1 Rodriguez who conducted the buy-bust operation against appellant; it rejected appellant's defense of denial and frame-up. The RTC noted that the defense of frame-up is easily concocted and is commonly used as a standard line of defense in most prosecutions arising from violations of the comprehensive dangerous drugs act.[5] Moreover, other than the self-serving statements of appellant, no clear and convincing exculpatory evidence was presented in the present case.

The dispositive part of the Judgment of the RTC reads:

> WHEREFORE, IN VIEW OF ALL THE FOREGOING, this Court hereby finds the accused herein, SALIM ISMAEL *y* RADANG, guilty beyond reasonable doubt in both cases, for violation of Sections 5 and 11, Article II of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and hereby sentences the said accused, in Criminal Case No. 5021 (19952) for Violation of Section 5, Article II of Republic Act No. 9165, to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00), and in Criminal Case No. 5022 (19953) for Violation of Section 11, Article II of Republic Act No. 9165, to suffer the penalty of Imprisonment of TWELVE (12) YEARS and ONE (1) DAY to FIFTEEN (15) YEARS and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00).
>
> The dangerous drugs seized and recovered from the accused in these cases are hereby ordered confiscated and forfeited in favor of the government to be disposed in accordance with the pertinent provisions of Republic Act No. 9165 and its implementing rules and guidelines.
>
> Cost against the accused.
>
> SO ORDERED.[6]

Ruling of the Court of Appeals

Dissatisfied with the RTC's verdict, appellant appealed to the CA, but on June 14, 2013, the CA affirmed *in toto* the RTC's

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[5] Records, p. 98.

[6] *Id*. at 100.

Judgment. The CA held that the elements of both illegal sale and illegal possession of dangerous drugs had been duly proven in the instant case. The CA joined the RTC in giving full credence to the testimonies of the aforementioned police officers, as they are presumed to have performed their duties in a regular manner, no evidence to the contrary having been adduced in the twin cases. Moreover, the CA found that in these cases, the integrity and evidentiary value of the seized drugs had not at all been compromised, but were in fact duly preserved.

The CA disposed as follows:

> WHEREFORE, the assailed Judgment of the Regional Trial Court, 9th Judicial Region, Branch 12, Zamboanga City finding accused-appellant Salim Ismael y Radang guilty beyond reasonable doubt of Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 is AFFIRMED *in toto.*
>
> SO ORDERED.[7]

Taking exception to the CA's Decision, appellant instituted the present appeal before this Court and in his Appellant's Brief[8] argues that:

> THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT WHEN [HIS] GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[9]

It is appellant's contention that his guilt had not been proven beyond reasonable doubt because the prosecution: (1) failed to establish the identity of the prohibited drugs allegedly seized from him and; (2) likewise failed to comply with the strict requirements of Section 21 of RA 9165.

Our Ruling

The appeal is meritorious.

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[7] CA *rollo,* p. 108.

[8] *Id.* at 14-34.

[9] *Id.* at 16.

To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.[10] What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.

On the other hand, for illegal possession of dangerous drugs, the following elements must be established: "[1] the accused was in possession of dangerous drugs; [2] such possession was not authorized by law; and [3] the accused was freely and consciously aware of being in possession of dangerous drugs."[11]

In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. "The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed."[12]

After a careful examination of the records of the case, we find that the prosecution failed to establish an unbroken chain of custody of the seized drugs in violation of Section 21, Article II of RA 9165.

The pertinent provisions of Section 21 state:

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/

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[10] *People v. Alberto*, 625 Phil. 545, 554 (2010) citing *People v. Dumlao,* 584 Phil. 732, 739 (2009).

[11] *Reyes v. Court of Appeals,* 686 Phil. 137, 148 (2012) citing *People v. Sembrano,* 642 Phil. 476, 490-491 (2010).

[12] *Fajardo v. People*, 691 Phil. 752, 758-759 (2012) citing *People v. Gutierrez,* 614 Phil. 285, 293 (2009).

Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

Similarly, the Implementing Rules and Regulations (IRR) further elaborate on the proper procedure to be followed in Section 21(a) of RA 9165. It states:

(a) The apprehending office/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

In *Mallillin v. People,*[13] the Court explained the chain of custody rule as follows:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the

[13] 576 Phil. 576, 587 (2008).

proponent claims it to be. **It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.** These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. (Emphasis supplied)

The first link in the chain is the marking of the seized drug. We have previously held that:

x x x Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband are immediately marked because succeeding handlers of the specimen will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, obviating switching, 'planting,' or contamination of evidence.[14]

It is important that the seized drugs be immediately marked, if possible, as soon as they are seized from the accused.

Furthermore, in *People v. Gonzales,*[15] the Court explained that:

The first stage in the chain of custody rule is the marking of the dangerous drugs or related items. **Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest.** The importance of the prompt marking cannot be denied, because succeeding handlers of dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal

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[14] *People v. Coreche*, 612 Phil. 1238, 1244 (2009).

[15] 708 Phil. 121, 130-131 (2013).

proceedings, thereby forestalling switching, planting or contamination of evidence. **In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value**. (Emphasis supplied)

In this case, SPO1 Rodriguez testified on the seizure of the sachets of *shabu* he found in appellant's possession after the latter was arrested. SPO1 Rodriguez shared the details of how the seized drugs were handled following its confiscation as follows:

RSP II Ivan C. Mendoza, Jr.:

Q: You are telling the Honorable Court that instead of finding concealed weapon, you x x x found two small sized heat-sealed transparent plastic bag[s]?
A: Yes, sir.

Q: Where [were] these two small[-]sized heat-sealed transparent plastic [packs] found?
A: [In] his left-front pocket.

Q: Were they wrapped further in another piece of paper or were they just found in that pocket?
A: [They were] wrapped in a [golden-colored] cigarette paper.

Q: Would you x x x be able to remember that [golden- colored] cigarette paper? The wrapper of plastic pack?
A: Yes, sir.

Q: Why will you be able to remember it?
A: **Because I turned it over to the desk officer and the desk officer turned it over to the investigator, the investigator marked it.**

Q: Who is the investigator?
A: PO2 Rodolfo Tan.

Q: So did you see anything that the investigator Rodolfo Tan do in that golden paper?
A: He marked his initial [sic].

Q: Ah, you saw him [mark] an initial?
A: Yes, sir.

Q: What did you see him [mark] on the paper?
A: RDT.

Q: And do you know the meaning of RDT?
A: Yes, Rodolfo Dagalea Tan.[16]

The testimony of SPO1 Rodriguez on the chain of custody of the seized drugs leaves much to be desired. It is evident that there was a break in the very first link of the chain when he failed to mark the sachets of *shabu* immediately upon seizing them from the appellant. According to SPO1 Rodriguez, after finding sachets of *shabu* in appellant's possession, he turned the drugs over to the desk officer. SPO1 Rodriguez did not even explain why he failed to mark or why he could not have marked the seized items immediately upon confiscation. Allegedly, the desk officer, after receiving the seized items from SPO1 Rodriguez, in turn handed them over to PO2 Tan. Notably, this desk officer was not presented in court thereby creating another break in the chain of custody. Again, no explanation was offered for the non-presentation of the desk officer or why he himself did not mark the seized items. It was only upon receipt by PO2 Tan, allegedly from the desk officer, of the seized drugs that the same were marked at the police station. This means that from the time the drugs were seized from appellant until the time PO2 Tan marked the same, there was already a significant gap in the chain of custody. Because of this gap, there is no certainty that the sachets of drugs presented as evidence in the trial court were the same drugs found in appellant's possession.

SPO1 Santiago, the poseur-buyer in the buy-bust operation, was presented to corroborate the testimony of SPO1 Rodriguez. However, his testimony likewise showed that the arresting officers did not mark the seized drugs immediately after the arrest and in the presence of the appellant. Similarly, no explanation was given for the lapse. SPO1 Santiago testified as follows:

Q: So what did you do with the small transparent sachet after police officer Rodriguez came to assist you?
A: **After the arrest of a certain Ismael we proceeded to our police station when we arrived there I turnover [sic] the transparent sachet to our desk officer.**

[16] TSN, December 8, 2006, pp. 7-8.

Q: Who was the desk officer?
A: At that time it was PO3 Floro Napalcruz.

Q: Did you notice anything that he did with the specimen that you turnover [sic] to him, if any?

COURT: You are referring to the desk officer?

RSPII IVAN C. MENDOZA, JR.: Yes, Your Honor.

A: During that time, Your Honor, I gave to him the, [sic] which I buy from him [sic] the one (1) piece of transparent small sachet of *shabu* then after that I get [sic] out from the office.[17]

During cross-examination, SPO1 Santiago reiterated that he did not mark the seized drugs. The sachets were marked after they were received by PO2 Tan.

Q: Now, you said that this plastic sachet taken from the suspect, you turned it over to the desk officer of the police station?
A: Yes, sir.

Q: After turning it over, you left?
A: Yes, sir.

Q: You do not know what happened to the sachet?
A: Yes, sir.

Q: You did not place your markings there?

A: **None, sir**.[18]

It is clear from the above that SPO1 Rodriguez and SPO1 Santiago did not mark the seized drugs immediately after they were confiscated from appellant. No explanations were given why markings were not immediately made. At this stage in the chain, there was already a significant break such that there can be no assurance against switching, planting, or contamination. The Court has previously held that, "failure to mark the drugs immediately after they were seized from the accused casts doubt

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[17] TSN, March 8, 2007, pp. 23-24.

[18] TSN, March 9, 2007, p. 27.

on the prosecution evidence warranting an acquittal on reasonable doubt."[19]

Both arresting officers testified that they turned over the sachets of *shabu* to a desk officer in the person of PO3 Napalcruz at the police station. Notably, PO3 Napalcruz was not presented in court to testify on the circumstances surrounding the alleged receipt of the seized drugs. This failure to present PO3 Napalcruz is another fatal defect in an already broken chain of custody. Every person who takes possession of seized drugs must show how it was handled and preserved while in his or her custody to prevent any switching or replacement.

After PO3 Napalcruz, the seized drugs were then turned over to PO2 Tan. It was only at this point that marking was done on the seized drugs. He revealed in his testimony the following:

4th ACP RAY Z. BONGABONG:

Q: [After the apprehension] of the accused in this case, what happened?

A: SPO1 Roberto Santiago turned over to the Desk Officer one (1) small size heat-sealed transparent plastic pack containing *shabu*, allegedly a buy[-]bust stuff confiscated from the subject person and marked money while SPO1 Eduardo Rodriguez turned over two (2) small size heat[-]sealed transparent plastic packs allegedly confiscated from the possession of the subject person during a body search conducted and one (1) Nokia cellphone 3310 and cash money of ₱710.00.

x x x x x x x x x

Q: You as investigator of the case what did you do, if any, upon the turn over of those items?

A: I prepared a request for laboratory examination addressed to the Chief PNP Crime Laboratory 9, R. T. Lim Boulevard, this City.

Q: This small heat[-]sealed transparent plastic sachet if you can see this again, will you be able to identify the same?

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[19] *People v. Umipang*, 686 Phil. 1024, 1050 (2012), citing *People v. Coreche*, *supra* note 14; *People v. Laxa*, 414 Phil. 156 (2001); *People v. Casimiro*, 432 Phil. 966 (2002).

A: Yes, Sir.

Q: How?
A: Through my initial, Sir.

Q: What initial?
A: RDT

Q: What does RDT stands [sic] for?
A: It stands for my name Rodolfo Dagalea Tan.[20]

In fine, PO2 Tan claimed during his direct examination that he received the seized items from the desk officer.

During cross-examination, however, PO2 Tan contradicted his previous statement on who turned over the sachets of *shabu* to him, *viz.*:

ATTY. EDGARDO D. GONZALES:

Q: Santiago told you that he was the poseur buyer?
A: Yes, Sir.

Q: He turned over to you, what?
A: **He turned over to me small size heat[-]sealed transparent plastic pack containing white crystalline substance, containing *shabu*.**

x x x x x x x x x

Q: You also identified two other pieces of sachet, correct, Sir?
A: Yes, Sir.

Q: Who turned over to you?
A: **SPO1 Eduardo Rodriguez**.[21]

Due to the apparent breaks in the chain of custody, it was possible that the seized item subject of the sale transaction was switched with the seized items subject of the illegal possession case. This is material considering that the imposable penalty for illegal possession of *shabu* depends on the quantity or weight of the seized drug.

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[20] TSN, July 13, 2007, pp. 14-17.

[21] *Id.* at 42-48.

Aside from the failure to mark the seized drugs immediately upon arrest, the arresting officers also failed to show that the marking of the seized drugs was done in the presence of the appellant. This requirement must not be brushed aside as a mere technicality. It must be shown that the marking was done in the presence of the accused to assure that the identity and integrity of the drugs were properly preserved. Failure to comply with this requirement is fatal to the prosecution's case.

The requirements of making an inventory and taking of photographs of the seized drugs were likewise omitted without offering an explanation for its non-compliance. This break in the chain tainted the integrity of the seized drugs presented in court; the very identity of the seized drugs became highly questionable.

To recap, based on the evidence of the prosecution, it is clear that no markings were made immediately after the arrest of the appellant. The seized drugs were allegedly turned over to desk officer PO3 Napalcruz but the prosecution did not bother to present him to testify on the identity of the items he received from SPO1 Rodriguez and SPO1 Santiago. PO3 Napalcruz supposedly turned over the drugs to PO2 Tan who marked the same at the police station. During his direct testimony, PO2 Tan claimed that he received the drugs from PO3 Napalcruz. However, during his cross-examination, PO2 Tan contradicted himself when he admitted receipt of the seized drugs from SPO1 Santiago and SPO1 Rodriguez. Aside from these glaring infirmities, there was no inventory made, or photographs taken, of the seized drugs in the presence of the accused or his representative, or in the presence of any representative from the media, Department of Justice or any elected official, who must sign the inventory, or be given a copy of the inventory as required by RA 9165 and its IRR.

Lastly, we note that the trial court, in its November 12, 2007 Order, already denied the admission of Exhibits "B-1" and "B-2" or the drugs subject of the illegal possession case. The relevant portions of the Order are as follows:

Plaintiff's Exhibits "B-1" and "B-2" however are DENIED admission on the grounds that Exhibit "B-1" submitted by the

prosecution in evidence is merely a cigarette foil, whereas Exhibit "B-2" is a heat sealed transparent plastic sachet containing 0.0135 gram of methamphetamine hydrochloride which are inconsistent with its offer that Exhibits "B-1" and "B-2" are two (2) plastic heat sealed transparent plastic sachets containing *shabu* with a total weight of 0.0310 gram.[22]

Surprisingly, however, the trial court rendered a verdict convicting the appellant of violating Section 11, RA 9165 on illegal possession of dangerous drugs based on the same pieces of evidence it previously denied.

In sum, we find that the prosecution failed to: (1) overcome the presumption of innocence which appellant enjoys; (2) prove the *corpus delicti* of the crime; (3) establish an unbroken chain of custody of the seized drugs; and (4) offer any explanation why the provisions of Section 21, RA 9165 were not complied with. This Court is thus constrained to acquit the appellant based on reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The assailed June 14, 2013 Decision of the Court of Appeals in CA-G.R. CR HC No. 00902, which affirmed the August 31, 2010 Judgment of Branch 12, Regional Trial Court of Zamboanga City in Criminal Case Nos. 5021 (19952) and 5022 (19953) is **REVERSED** and **SET ASIDE**.

Accordingly, appellant Salim R. Ismael is **ACQUITTED** based on reasonable doubt.

The Director of the Bureau of Corrections is directed to cause the immediate release of appellant, unless the latter is being lawfully held for another cause, and to inform the Court of the date of his release or reason for his continued confinement within five days from notice.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

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[22] Records, p. 68.

FIRST DIVISION

[G.R. No. 212690.* February 20, 2017]

SPOUSES ROMEO PAJARES and IDA T. PAJARES, *petitioners, vs.* **REMARKABLE LAUNDRY AND DRY CLEANING, represented by ARCHEMEDES G. SOLIS,** *respondent.*

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; CONTRACTS; ACTIONS FOR SPECIFIC PERFORMANCE AND RESCISSION OF CONTRACT, DISTINGUISHED.—** Specific performance is "[t]he remedy of requiring exact performance of a contract in the specific form in which it was made, or according to the precise terms agreed upon. [It is t]he actual accomplishment of a contract by a party bound to fulfill it." Rescission of contract under Article 1191 of the Civil Code, on the other hand, is a remedy available to the obligee when the obligor cannot comply with what is incumbent upon him. It is predicated on a breach of faith by the other party who violates the reciprocity between them. Rescission may also refer to a remedy granted by law to the contracting parties and sometimes even to third persons in order to secure reparation of damages caused them by a valid contract, by means of restoration of things to their condition in which they were prior to the celebration of the contract.

2. **ID.; ID.; ID.; THERE IS NO SUCH THING AS AN "ACTION FOR BREACH OF CONTRACT"; BREACH OF CONTRACT IS A CAUSE OF ACTION BUT NOT THE ACTION OR RELIEF ITSELF.—** [R]espondent's counsels designated the Complaint as one for "Breach of Contract & Damages," which is a misnomer and inaccurate. This erroneous notion was reiterated in respondent's Memorandum wherein it was stated that "the main action of CEB 39025 is one for a breach of contract." There is no such thing as an "action for breach of contract." Rather, "[b]reach of contract is a cause of action, but not the action or relief itself." Breach of contract may be the cause of action in a complaint for specific performance

* Formerly UDK-15080.

or rescission of contract, both of which are incapable of pecuniary estimation and, therefore, cognizable by the RTC.

3. ID.; ID.; DAMAGES; WHERE THE COMPLAINT PRIMARILY SEEKS TO ENFORCE THE ACCESSORY OBLIGATION CONTAINED IN THE PENAL CLAUSE, THE ACTION IS ONE FOR DAMAGES CAPABLE OF PECUNIARY ESTIMATION.— Neither can we sustain respondent's contention that its Complaint is incapable of pecuniary estimation since it primarily seeks to enforce the penal clause contained in Article IV of the Remarkable Dealer Outlet Contract, x x x[.] To Our mind, petitioners' responsibility under the above penal clause involves the payment of liquidated damages because under Article 2226 of the Civil Code *the amount the parties stipulated to pay in case of breach are liquidated damages*. "It is attached to an obligation in order to ensure performance and has a double function: (1) to provide for liquidated damages, and (2) to strengthen the coercive force of the obligation by the threat of greater responsibility in the event of breach." Concomitantly, what respondent primarily seeks in its Complaint is to recover aforesaid liquidated damages (which it termed as "incidental and consequential damages") premised on the alleged breach of contract committed by the petitioners when they unilaterally ceased business operations. Breach of contract may also be the cause of action in a complaint for damages filed pursuant to Article 1170 of the Civil Code. x x x [A]fter juxtaposing Article IV of the Remarkable Dealer Outlet Contract *vis-à-vis* the prayer sought in respondent's Complaint, this Court is convinced that said Complaint is one for damages. True, breach of contract may give rise to a complaint for specific performance or rescission of contract. In which case, the subject matter is incapable of pecuniary estimation and, therefore, jurisdiction is lodged with the RTC. However, breach of contract may also be the cause of action in a complaint for damages. Thus, it is not correct to immediately conclude, as the CA erroneously did, that since the cause of action is breach of contract, the case would only either be specific performance or rescission of contract because it may happen, as in this case, that the complaint is one for damages.

4. REMEDIAL LAW; COURTS; JURISDICTION; IN AN ACTION FOR DAMAGES, JURISDICTION IS DETERMINED BY THE TOTAL AMOUNT OF DAMAGES CLAIMED.— Paragraph 8, Section 19 of BP 129, as amended by Republic Act No. 7691, provides that where the amount of

the demand exceeds ₱100,000.00, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs, exclusive jurisdiction is lodged with the RTC. Otherwise, jurisdiction belongs to the Municipal Trial Court. The above jurisdictional amount had been increased to ₱200,000.00 on March 20, 1999 and further raised to ₱300,000.00 on February 22, 2004 pursuant to Section 5 of RA 7691. Then in Administrative Circular No. 09-94 this Court declared that "where the claim for damages is the main cause of action, or one of the causes of action, the amount of such claim shall be considered in determining the jurisdiction of the court." In other words, where the complaint primarily seeks to recover damages, all claims for damages should be considered in determining which court has jurisdiction over the subject matter of the case regardless of whether they arose from a single cause of action or several causes of action. Since the total amount of the damages claimed by the respondent in its Complaint filed with the RTC on September 3, 2012 amounted only to ₱280,000.00, said court was correct in refusing to take cognizance of the case.

APPEARANCES OF COUNSEL

Romeo J. Balili for petitioners.
Jan Michael B. Cagulada for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Breach of contract may give rise to an action for specific performance or rescission of contract.[1] It may also be the cause of action in a complaint for damages filed pursuant to Art. 1170 of the Civil Code.[2] In the specific performance and rescission of contract cases, the subject matter is incapable of pecuniary estimation, hence jurisdiction belongs to the Regional Trial

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[1] See *Radio Communications of the Philippines, Inc. v. Court of Appeals*, 435 Phil. 62, 68 (2002).

[2] See *Pacmac, Inc. v. Intermediate Appellate Court*, 234 Phil. 548, 556 (1987).

Court (RTC). In the case for damages, however, the court that has jurisdiction depends upon the total amount of the damages claimed.

Assailed in this Petition for Review on *Certiorari*[3] is the December 11, 2013 Decision[4] of the Court of Appeals (CA) in CA-G.R. CEB SP No. 07711 that set aside the February 19, 2013 Order[5] of the RTC, Branch 17, Cebu City dismissing Civil Case No. CEB-39025 for lack of jurisdiction.

Factual Antecedents

On September 3, 2012, Remarkable Laundry and Dry Cleaning (respondent) filed a Complaint denominated as "Breach of Contract and Damages"[6] against spouses Romeo and Ida Pajares (petitioners) before the RTC of Cebu City, which was docketed as Civil Case No. CEB-39025 and assigned to Branch 17 of said court. Respondent alleged that it entered into a Remarkable Dealer Outlet Contract[7] with petitioners whereby the latter, acting as a dealer outlet, shall accept and receive items or materials for laundry which are then picked up and processed by the former in its main plant or laundry outlet; that petitioners violated Article IV (Standard Required Quota & Penalties) of said contract, which required them to produce at least 200 kilos of laundry items each week, when, on April 30, 2012, they ceased dealer outlet operations on account of lack of personnel; that respondent made written demands upon petitioners for the payment of penalties imposed and provided for in the contract, but the latter failed to pay; and, that petitioners' violation constitutes breach of contract. Respondent thus prayed, as follows:

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[3] *Rollo*, pp. 4-24.

[4] *Id*. at 25-34; penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Ramon Paul L. Hernando and Carmelita Salandanan-Manahan.

[5] *Id*. at 97; penned by Judge Silvestre A. Maamo, Jr.

[6] *Id*. at 38-43.

[7] *Id*. at 44-52.

WHEREFORE, premises considered, by reason of the above-mentioned breach of the subject dealer contract agreement made by the defendant, it is most respectfully prayed of the Honorable Court to order the said defendant to pay the following *incidental and consequential* damages to the plaintiff, to wit:

a) TWO HUNDRED THOUSAND PESOS (PHP200,000.00) plus legal interest as *incidental and consequential* [sic] for violating Articles IV and XVI of the Remarkable Laundry Dealer Contract dated 08 September 2011.

b) Thirty Thousand Pesos (₱30,000.00) as legal expenses.

c) Thirty Thousand Pesos (₱30,000.00) as exemplary damages.

d) Twenty Thousand Pesos (₱20,000.00) as cost of suit.

e) Such other reliefs that the Honorable Court deems as just and equitable.[8] (Italics in the original)

Petitioners submitted their Answer,[9] to which respondent filed its Reply.[10]

During pre-trial, the issue of jurisdiction was raised, and the parties were required to submit their respective position papers.

Ruling of the Regional Trial Court

On February 19, 2013, the RTC issued an Order dismissing Civil Case No. CEB-39025 for lack of jurisdiction, stating:

In the instant case, the plaintiff's complaint is for the recovery of damages for the alleged breach of contract. The complaint sought the award of ₱200,000.00 as incidental and consequential damages; the amount of ₱30,000.00 as legal expenses; the amount of ₱30,000.00 as exemplary damages; and the amount of ₱20,000.00 as cost of the suit, **or for the total amount of ₱280,000.00 as damages**.

Under the provisions of Batas Pambansa Blg. 129 as amended by Republic Act No. 7691, the amount of demand or claim in the complaint

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[8] *Id.* at 42.

[9] *Id.* at 57-63.

[10] *Id.* at 71-77.

for the Regional Trial Courts (RTCs) to exercise exclusive original jurisdiction shall exceed ₱300,000.00; otherwise, the action shall fall under the jurisdiction of the Municipal Trial Courts. In this case, the total amount of demand in the complaint is only ₱280,000.00, which is less than the jurisdictional amount of the RTCs. Hence, this Court (RTC) has no jurisdiction over the instant case.

WHEREFORE, premises considered, the instant case is hereby DISMISSED for lack of jurisdiction.

Notify the counsels.

SO ORDERED.[11] (Emphasis in the original)

Respondent filed its Motion for Reconsideration,[12] arguing that as Civil Case No. CEB-39025 is for breach of contract, or one whose subject is incapable of pecuniary estimation, jurisdiction thus falls with the RTC. However, in an April 29, 2013 Order,[13] the RTC held its ground.

Ruling of the Court of Appeals

Respondent filed CA-G.R. CEB SP No. 07711, a Petition for *Certiorari*[14] seeking to nullify the RTC's February 19, 2013 and April 29, 2013 Orders. It argued that the RTC acted with grave abuse of discretion in dismissing Civil Case No. CEB-39025. According to respondent, said case is one whose subject matter is incapable of pecuniary estimation and that the damages prayed for therein are merely incidental thereto. Hence, Civil Case No. CEB-39025 falls within the jurisdiction of the RTC pursuant to Section 19 of *Batas Pambansa Blg*. 129, as amended (BP 129).

On December 11, 2013, the CA rendered the assailed Decision setting aside the February 19, 2013 Order of the RTC and remanding the case to the court *a quo* for further proceedings. It held as follows:

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[11] *Id.* at 97.

[12] *Id.* at 98-105.

[13] *Id.* at 118.

[14] *Id.* at 119-136.

In determining the jurisdiction of an action whose subject is incapable of pecuniary estimation, the nature of the principal action or remedy sought must first be ascertained. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation and the jurisdiction of the court depends on the amount of the claim. But, where the primary issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of the principal relief sought, such are actions whose subjects are incapable of pecuniary estimation, hence cognizable by the RTCs.[15]

x x x x x x x x x

Verily, what determines the nature of the action and which court has jurisdiction over it are the allegations of the complaint and the character of the relief sought.[16]

In our considered view, the complaint, is one incapable of pecuniary estimation; thus, one within the RTC's jurisdiction. x x x

x x x x x x x x x

A case for breach of contract [sic] is a cause of action either for specific performance or rescission of contracts. An action for rescission of contract, as a counterpart of an action for specific performance, is incapable of pecuniary estimation, and therefore falls under the jurisdiction of the RTC.[17]

Thus, the totality of damages principle finds no application in the instant case since the same applies only when damages is principally and primarily demanded in accordance with the specification in Administrative Circular No. 09-94 which reads: 'in cases where the claim for damages is the main cause of action…the amount of such claim shall be considered in determining the jurisdiction of the court.'

Thus, the court *a quo* should not have dismissed the instant case.

WHEREFORE, in view of the foregoing, the Order dated February 19, 2013 of the Regional Trial Court, 7th Judicial Region, Branch 17, Cebu City in Civil Case No. CEB-39025 for Breach of Contract

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[15] Citing *Villena v. Payoyo*, 550 Phil. 686, 691 (2007).

[16] *Id.*

[17] *Id.* at 692.

and Damages is hereby REVERSED and SET ASIDE. This case is hereby REMANDED to the RTC which is ORDERED to PROCEED with the trial on the merits with dispatch.

SO ORDERED.[18]

Petitioners sought to reconsider, but were denied. Hence, the present Petition.

Issue

In a June 29, 2015 Resolution,[19] this Court resolved to give due course to the Petition, which claims that the CA erred in declaring that the RTC had jurisdiction over respondent's Complaint which, although denominated as one for breach of contract, is essentially one for simple payment of damages.

Petitioners' Arguments

In praying that the assailed CA dispositions be set aside and that the RTC's February 19, 2013 Order dismissing Civil Case No. CEB-39025 be reinstated, petitioners in their Petition and Reply[20] espouse the original findings of the RTC that Civil Case No. CEB-39025 is for the recovery of a sum of money in the form of damages. They asserted that in determining jurisdiction over the subject matter, the allegations in the Complaint and the principal relief in the prayer thereof must be considered; that since respondent merely prayed for the payment of damages in its Complaint and not a judgment on the claim of breach of contract, then jurisdiction should be determined based solely on the total amount of the claim or demand as alleged in the prayer; that while breach of contract may involve a claim for specific performance or rescission, neither relief was sought in respondent's Complaint; and, that respondent "chose to focus his [sic] primary relief on the payment of damages,"[21] which is "the true, actual, and principal relief

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[18] *Rollo*, pp. 28-33.

[19] *Id.* at 243-244.

[20] *Id.* at 231-240.

[21] *Id.* at 15.

sought, and is not merely incidental to or a consequence of the alleged breach of contract."[22] Petitioners conclude that, applying the totality of claims rule, respondent's Complaint should be dismissed as the claim stated therein is below the jurisdictional amount of the RTC.

Respondent's Arguments

Respondent, on the other hand, counters in its Comment[23] that the CA is correct in declaring that Civil Case No. CEB-39025 is primarily based on breach of contract, and the damages prayed for are merely incidental to the principal action; that the Complaint itself made reference to the Remarkable Dealer Outlet Contract and the breach committed by petitioners, which gave rise to a cause of action against the latter; and, that with the filing of the case, the trial court was thus called upon to determine whether petitioners violated the dealer outlet contract, and if so, the amount of damages that may be adjudged in respondent's favor.

Our Ruling

The Court grants the Petition. The RTC was correct in categorizing Civil Case No. CEB-39025 as an action for damages seeking to recover an amount below its jurisdictional limit.

Respondent's complaint denominated as one for "Breach of Contract & Damages" is neither an action for specific performance nor a complaint for rescission of contract.

In ruling that respondent's Complaint is incapable of pecuniary estimation and that the RTC has jurisdiction, the CA comported itself with the following ratiocination:

> A case for breach of contract [sic] is a cause of action either for specific performance or rescission of contracts. An action for rescission of contract, as a counterpart of an action for specific performance,

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[22] *Id*. at 16.

[23] *Id*. at 201-217.

is incapable of pecuniary estimation, and therefore falls under the jurisdiction of the RTC.[24]

without, however, determining whether, from the four corners of the Complaint, respondent actually intended to initiate an action for specific performance or an action for rescission of contract. Specific performance is "[t]he remedy of requiring exact performance of a contract in the specific form in which it was made, or according to the precise terms agreed upon. [It is t]he actual accomplishment of a contract by a party bound to fulfill it."[25] Rescission of contract under Article 1191 of the Civil Code, on the other hand, is a remedy available to the obligee when the obligor cannot comply with what is incumbent upon him.[26] It is predicated on a breach of faith by the other party who violates the reciprocity between them. Rescission may also refer to a remedy granted by law to the contracting parties and sometimes even to third persons in order to secure reparation of damages caused them by a valid contract, by means of restoration of things to their condition in which they were prior to the celebration of the contract.[27]

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[24] *Id*. at 32.

[25] *Ayala Life Assurance, Inc. v. Ray Burton Development Corporation,* 515 Phil. 431, 438 (2006), citing *Black's Law Dictionary*, Sixth Centennial Edition, at 1138.

[26] Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured partymay choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

[27] ARTICLE 1381. The following contracts are rescissible:

(1) Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof;

In a line of cases, this Court held that –

In determining whether an action is one the subject matter of which is not capable of pecuniary estimation this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal trial courts or in the courts of first instance would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by courts of first instance (now Regional Trial Courts).[28]

To write *finis* to this controversy, therefore, it is imperative that we first determine the real nature of respondent's principal action, as well as the relief sought in its Complaint, which we quote in *haec verba*:

REPUBLIC OF THE PHILIPPNES
REGIONAL TRIAL COURT
BRANCH ___
CEBU CITY

Remarkable Laundry and Dry Cleaning herein represented by Archemedes G. Solis, *Plaintiff*,	Civil Case No. ____ For: Breach of Contract & Damages

(2) Those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number;
(3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them;
(4) Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority;
(5) All other contracts specially declared by law to be subject to rescission.

[28] *Russel v. Hon. Vestil*, 364 Phil. 392, 400 (1999), citing *Singson v. Isabela Sawmill*, 177 Phil. 575, 588-589 (1979); *Raymundo v. Court of Appeals*, 288 Phil. 344, 348 (1992); *Genesis Investment, Inc. v. Heirs of Ceferino Ebarasabal*, 721 Phil. 798, 807 (2013).

vs.

Spouses Romeo Pajares and Ida T. Pajares,
Defendants.

COMPLAINT

Plaintiff, by counsels, to the Honorable Court most respectfully states THAT:

1. Plaintiff Remarkable Laundry and Dry Cleaning Services, is a sole proprietorship business owned by Archemedes Solis with principal office address at PREDECO CMPD AS-Ostechi Bldg. Banilad, Hernan Cortes St., Mandaue City.

2. Defendant Ida Pajares is of legal age, Filipino, married with address at Hermag Village, Basak Mandaue City where she can be served with summons and other processes of the Honorable Court.

3. On 08 SEP 2011, parties entered and signed a Remarkable Laundry Dealer Outlet Contract for the processing of laundry materials, plaintiff being the owner of Remarkable Laundry and the defendant being the authorized dealer of the said business. (Attached and marked as Annex "A" is a copy of the Remarkable Laundry Dealer Outlet Contract.)

CAUSES OF ACTION:

4. Sometime on [sic] the second (2nd) quarter of 2012, defendant failed to follow the required standard purchase quota mentioned in article IV of the subject dealership agreement.

5. Defendant through a letter dated April 24, 2012 said it [sic] would CEASE OPERATION. It [sic] further stated that they [sic] would just notify or advise the office when they are [sic] ready for the business again making the whole business endeavor totally dependent upon their [sic] whims and caprices. (Attached and marked as Annex "B" is a copy of letter of the defendant dated April 24, 2012.)

6. The aforementioned act of unilateral cessation of operation by the defendant constitutes a serious breach to [sic] the contract because it totally, whimsically and grossly disregarded the Remarkable Laundry Dealer Outlet Contract, which resulted to [sic] failure on its part in obtaining the minimum purchase or delivery of 200 kilos per week for the entire duration of its cessation of operations.

7. Under the aforementioned Dealer Contract, specifically in Article XV of the same are classified as BREACH BY THE OUTLETS:

> 'The parties agree that the happening of any of the stipulation and events by the dealer outlet is otherwise [sic] in default of any of its obligations or violate any of the terms and condition under this agreement.
>
> Any violation of the above-mentioned provisions shall result in the immediate termination of this agreement, without prejudice to any of the RL Main Operators rights or remedies granted to it by law.
>
> THE DEALER OUTLET SHALL ALSO BE LIABLE TO PAY A FINE OF TWENTY FIVE THOUSAND PESOS, (₱25,000), FOR EVERY VIOLATION AND PHP 50,000 IF PRE-TERMINATION BY THE RL MAIN OPERATOR DUE TO BREACH OF THIS AGREEMENT.'

8. Likewise it is provided in the said contract that:

> '… The DEALER OUTLET must have a minimum 200 kilos on a six-day or per week pick-up for the entire duration of the contract to free the dealer outlet from being charge[d] Php 200/week on falling below required minimum kilos per week of laundry materials. Automatic charging shall become part of the billing on the services of the dealer outlet on cases where the minimum requirements on required kilos are not met.[']

9. The cessation of operation by the defendant, which is tantamount to gross infraction to [sic] the subject contract, resulted to [sic] incidental damages amounting to Two Hundred Thousand Pesos (PHP200,000.00). Defendant should have opted to comply with the Pre-termination clause in the subject contract other than its [sic] unilateral and whimsical cessation of operations.

10. The plaintiff formally reminded the defendant of her obligations under the subject contract through demand letters, but to no avail. The defendant purposely ignored the letters by [sic] the plaintiff. (Attached and marked as Annex "C" to "C-2" are the Demand Letters dated May 2, 2012, June 2, 2012 and June 19, 2012 respectively.)

11. To reiterate, the defendant temporarily stopped its business operation prior to the two-year contract duration had elapsed to the prejudice of the plaintiff, which is a clear disregard of its two-year obligation to operate the business unless a pre-termination is called.

12. Under Article 1159 of the Civil Code of the Philippines provides [sic]:

'Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.'

13. Likewise, Article 1170 of the Civil Code of the Philippines [provides] that:

'Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof are liable for damages.'

14. That the above-mentioned violations by the defendant to the Remarkable Laundry Dealer Contract, specifically Articles IV and XVI thereof constitute gross breach of contract which are unlawful and malicious under the Civil Code of the Philippines, which caused the plaintiff to incur *incidental and consequential damages* as found in the subject dealer contract in the total amount of Two Hundred Thousand Pesos (PHP200,000.00) and incidental legal expenses to protect its rights in the amount of ₱30,000.00.

PRAYER:

WHEREFORE, premises considered, by reason of the above-mentioned breach of the subject dealer contract agreement made by the defendant, it is most respectfully prayed of the Honorable Court to order the said defendant to pay the following *incidental and consequential* damages to the plaintiff, to wit:

a) Two Hundred Thousand Pesos (PHP200,000.00) plus legal interest as *incidental and consequential* [damages] for violating Articles IV and XVI of the Remarkable Laundry Dealer Contract dated 08 SEP 2011;

b) Thirty Thousand Pesos (₱30,000.00) as legal expenses;

c) Thirty Thousand Pesos (₱30,000.00) as exemplary damages;

d) Twenty Thousand Pesos (₱20,000.00) as cost of suit;

e) Such other reliefs that the Honorable Court deems as just and equitable.

August 31, 2012, Cebu City, Philippines.[29]

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[29] *Rollo*, pp. 38-42.

An analysis of the factual and material allegations in the Complaint shows that there is nothing therein which would support a conclusion that respondent's Complaint is one for specific performance or rescission of contract. It should be recalled that the principal obligation of petitioners under the Remarkable Laundry Dealership Contract is to act as respondent's dealer outlet. Respondent, however, neither asked the RTC to compel petitioners to perform such obligation as contemplated in said contract nor sought the rescission thereof. The Complaint's body, heading, and relief are bereft of such allegation. In fact, neither phrase appeared on or was used in the Complaint when, for purposes of clarity, respondent's counsels, who are presumed to be learned in law, could and should have used any of those phrases to indicate the proper designation of the Complaint. To the contrary, respondent's counsels designated the Complaint as one for "Breach of Contract & Damages," which is a misnomer and inaccurate. This erroneous notion was reiterated in respondent's Memorandum[30] wherein it was stated that "the main action of CEB 39025 is one for a breach of contract."[31] There is no such thing as an "action for breach of contract." Rather, "[b]reach of contract is a cause of action,[32] but not the action or relief itself."[33] Breach of contract may be the cause of action in a complaint for specific performance or rescission of contract, both of which are incapable of pecuniary estimation and, therefore, cognizable by the RTC. However, as will be discussed below, breach of contract may also be the cause of action in a complaint for damages.

A complaint primarily seeking to enforce the accessory obligation contained in the penal clause is actually an action for damages capable of pecuniary estimation.

[30] *Id*. at 258-275.

[31] *Id*. at 268.

[32] A cause of action is the delict or wrongful act or omission committed by the defendant in violation of the primary rights of the plaintiff.

[33] *Baguioro v. Barrios and Tupas Vda. de Atas*, 77 Phil. 120, 124 (1946).

Neither can we sustain respondent's contention that its Complaint is incapable of pecuniary estimation since it primarily seeks to enforce the penal clause contained in Article IV of the Remarkable Dealer Outlet Contract, which reads:

> Article IV: STANDARD REQUIRED QUOTA & PENALTIES
>
> In consideration [sic] for such renewal of franchise-dealership rights, the dealer outlet must have a minimum 200 kilos on a six-day or per week pick-up for the entire duration of the contract to FREE the dealer outlet from being charge [sic] Php200/week on falling below required minimum kilos per week of laundry materials. Automatic charging shall become part of the billing on the services of the dealer outlet on cases where the minimum requirements on required kilos are not met.
>
> The RL Main Operator has the option to cancel, terminate this dealership outlet contract, at its option should [sic] in the event that there are unpaid services equivalent to a two-week minimum required number of kilos of laundry materials but not ₱8,000 worth of collectibles, for services performed by the RL Main Operator or its assigned Franchise Outlet, unpaid bills on ordered and delivered support products, falling below required monthly minimum number of kilos.
>
> Ten [percent] (10%) interest charge per month will be collected on all unpaid obligations but should not be more than 45 days or an additional 10% on top of uncollected amount shall be imposed and shall earn additional 10% on the next succeeding months if it still remains unpaid. However, if the cause of default is due to issuance of a bouncing check the amount of such check shall earn same penalty charge with additional 5% for the first two weeks and 10% for the next two weeks and its succeeding two weeks thereafter from the date of dishonor until fully paid without prejudice to the filling of appropriate cases before the courts of justice. Violation of this provision if remained unsettled for two months shall be considered as violation [wherein] Article XV of this agreement shall be applied.[34]

To Our mind, petitioners' responsibility under the above penal clause involves the payment of liquidated damages because

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[34] *Rollo*, p. 45.

under Article 2226[35] of the Civil Code *the amount the parties stipulated to pay in case of breach are liquidated damages*. "It is attached to an obligation in order to ensure performance and has a double function: (1) to provide for liquidated damages, and (2) to strengthen the coercive force of the obligation by the threat of greater responsibility in the event of breach."[36]

Concomitantly, what respondent primarily seeks in its Complaint is to recover aforesaid liquidated damages (which it termed as "incidental and consequential damages") premised on the alleged breach of contract committed by the petitioners when they unilaterally ceased business operations. Breach of contract may also be the cause of action in a complaint for damages filed pursuant to Article 1170 of the Civil Code. It provides:

> Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, *and those who in any manner contravene the tenor thereof*, are liable for damages. (Emphasis supplied)

In *Pacmac, Inc. v. Intermediate Appellate Court*,[37] this Court held that the party who unilaterally terminated the exclusive distributorship contract without any legal justification can be held liable for damages by reason of the breach committed pursuant to Article 1170.

In sum, after juxtaposing Article IV of the Remarkable Dealer Outlet Contract *vis-à-vis* the prayer sought in respondent's Complaint, this Court is convinced that said Complaint is one for damages. True, breach of contract may give rise to a complaint for specific performance or rescission of contract. In which case, the subject matter is incapable of pecuniary estimation and, therefore, jurisdiction is lodged with the RTC.

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[35] ARTICLE 2226. Liquidated damages are those agreed upon by the parties to a contract, to be paid in case of breach thereof.

[36] *BF Corporation v. Werdenberg International Corporation,* G.R. No. 174387, December 9, 2015, 777 SCRA 60, 86.

[37] *Supra* note 2 at 556.

However, breach of contract may also be the cause of action in a complaint for damages. Thus, it is not correct to immediately conclude, as the CA erroneously did, that since the cause of action is breach of contract, the case would only either be specific performance or rescission of contract because it may happen, as in this case, that the complaint is one for damages.

In an action for damages, the court which has jurisdiction is determined by the total amount of damages claimed.

Having thus determined the nature of respondent's principal action, the next question brought to fore is whether it is the RTC which has jurisdiction over the subject matter of Civil Case No. CEB-39025.

Paragraph 8, Section 19[38] of BP 129, as amended by Republic Act No. 7691,[39] provides that where the amount of the demand exceeds ₱100,000.00, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs, exclusive jurisdiction is lodged with the RTC. Otherwise, jurisdiction belongs to the Municipal Trial Court.[40]

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[38] SEC. 19. *Jurisdiction in civil cases.* – Regional Trial Courts shall exercise exclusive original jurisdiction:

(1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;

x x x x x x x x x

(8) In all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of the property in controversy exceeds one hundred thousand pesos (₱100,000.00) or, in such other cases in Metro Manila, where the demand, exclusive of the abovementioned items exceeds two hundred thousand pesos (₱200,000.00).

x x x x x x x x x

[39] AN ACT EXPANDING THE JURISDICTION OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, AND MUNICIPAL CIRCUIT TRIAL COURTS, AMENDING FOR THE PURPOSE BATAS PAMBANSA BLG. 129, OTHERWISE KNOWN AS THE "JUDICIARY REORGANIZATION ACT OF 1980."

[40] SEC. 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial*

The above jurisdictional amount had been increased to ₱200,000.00 on March 20, 1999 and further raised to ₱300,000.00 on February 22, 2004 pursuant to Section 5 of RA 7691.[41]

Then in Administrative Circular No. 09-94[42] this Court declared that "where the claim for damages is the main cause of action, or one of the causes of action, the amount of such claim shall be considered in determining the jurisdiction of the court." In other words, where the complaint primarily seeks to recover damages, all claims for damages should be considered in determining which court has jurisdiction over the subject matter of the case regardless of whether they arose from a single cause of action or several causes of action.

Since the total amount of the damages claimed by the respondent in its Complaint filed with the RTC on September 3, 2012 amounted only to ₱280,000.00, said court was correct in refusing to take cognizance of the case.

Courts and Municipal Circuit Trial Courts in Civil Cases. — Metropolitan Trial Courts and Municipal Circuit Trial Courts shall exercise:

(1) Exclusive original jurisdiction over civil actions and probate proceedings, testate and intestate, including the grant of provisional remedies in proper cases, where the value of the property, estate, or amount of the demand does not exceed one hundred thousand pesos (₱100,000.00) or, in Metro Manila where such personal property, estate, or amount of the demand does not exceed two hundred thousand pesos (₱200,000.00), exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs, the amount of which must be specifically alleged: *Provided*, That interest, damages of whatever kind, attorney's fees, litigation expenses and costs shall be included in the determination of the filing fees: *Provided further*, That where there are several claims or causes of actions between the same or different parties embodied in the same complaint, the amount of the demand shall be the totality of the claims in all the causes of action, irrespective of whether the causes of action arose out of the same or different transactions;

[41] *Crisostomo v. De Guzman,* 551 Phil. 951 (2007).

[42] GUIDELINES IN THE IMPLEMENTATION OF REPUBLIC ACT NO. 7691. ENTITLED "AN ACT EXPANDING THE JURISDICTION OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS AND MUNICIPAL CIRCUIT TRIAL COURTS, AMENDING FOR THE PURPOSE BATAS PAMBANSA BLG. 129, OTHERWISE KNOWN AS THE "JUDICIARY REORGANIZATION ACT OF 1980."

WHEREFORE, the Petition is **GRANTED** and the December 11, 2013 Decision and March 19, 2014 Resolution of the Court of Appeals in CA-G.R. CEB SP No. 07711 are **REVERSED and SET ASIDE**. The February 19, 2013 Order of the Regional Trial Court, Branch 17, Cebu City dismissing Civil Case No. CEB-39025 for lack of jurisdiction is **REINSTATED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

SECOND DIVISION

[G.R. No. 214183. February 20, 2017]

E. GANZON, INC. (EGI) and EULALIO GANZON, *petitioners, vs.* **FORTUNATO B. ANDO, JR.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; PROJECT EMPLOYMENT, DEFINED AND EXPLAINED; PROJECT EMPLOYEES' ACTIVITIES MAY OR MAY NOT BE USUALLY NECESSARY OR DESIRABLE TO THE USUAL TRADE OR BUSINESS OF THE EMPLOYER AND THEIR SERVICES MAY BE LAWFULLY TERMINATED AT THE COMPLETION OF THE PROJECT OR PHASE THEY ARE ASSIGNED.— Under Art. 280, project employment is one which "has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee." To be considered as project-based, the employer has the burden of proof to show that: (*a*) the employee was assigned to carry out a specific project or undertaking and (*b*)

the duration and scope of which were specified at the time the employee was engaged for such project or undertaking. It must be proved that the particular work/service to be performed as well as its duration are defined in the employment agreement and made clear to the employee who was informed thereof at the time of hiring. The activities of project employees **may or may not** be usually necessary or desirable in the usual business or trade of the employer. x x x As the assigned project or phase **begins and ends at determined or determinable times**, the services of the project employee may be lawfully terminated at its completion.

2. ID.; ID.; ID.; REQUIREMENTS FOR VALIDITY OF A PROJECT-BASED EMPLOYMENT; COMPLIED WITH IN CASE AT BAR.— The Court has upheld the validity of a project-based contract of employment provided that the period was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter; and it is apparent from the circumstances that the period was not imposed to preclude the acquisition of tenurial security by the employee. Otherwise, such contract should be struck down as contrary to public policy, morals, good custom or public order. Here, Ando was adequately notified of his employment status at the time his services were engaged by EGI for the Bahay Pamulinawen and the West Insula Projects. The contracts he signed consistently stipulated that his services as a project worker were being sought. There was an informed consent to be engaged as such. His consent was not vitiated. As a matter of fact, Ando did not even allege that force, duress or improper pressure were used against him in order to agree. His being a carpenter does not suffice. There was no attempt to frustrate Ando's security of tenure. His employment was for a specific project or undertaking because the nature of EGI's business is one which will not allow it to employ workers for an indefinite period. As a corporation engaged in construction and residential projects, EGI depends for its business on the contracts it is able to obtain. Since work depends on the availability of such contracts, necessarily the

duration of the employment of its work force is not permanent but coterminous with the projects to which they are assigned and from whose payrolls they are paid. It would be extremely burdensome for EGI as an employer if it would have to carry them as permanent employees and pay them wages even if there are no projects for them to work on.

3. ID.; ID.; ID.; THE DECISIVE DETERMINANT IN PROJECT EMPLOYMENT IS THE ACTIVITY THAT THE EMPLOYEE IS CALLED UPON TO PERFORM AND NOT THE DAY CERTAIN AGREED UPON BY THE PARTIES; REPEATED AND SUCCESSIVE REHIRING DOES NOT CONFER UPON AN EMPLOYEE REGULAR EMPLOYMENT STATUS.— *Project* employment should not be confused and interchanged with *fixed-term* employment[.] x x x The decisive determinant in project employment is the activity that the employee is called upon to perform and not the day certain agreed upon by the parties for the commencement and termination of the employment relationship. Indeed, in *Filsystems, Inc. v. Puente,* We even ruled that an employment contract that does not mention particular dates that establish the specific duration of the project does not preclude one's classification as a project employee. x x x The fact that Ando was required to render services necessary or desirable in the operation of EGI's business for more than a year does not in any way impair the validity of his project employment contracts. Time and again, We have held that the length of service through repeated and successive rehiring is not the controlling determinant of the employment tenure of a project employee. The rehiring of construction workers on a project-to-project basis does not confer upon them regular employment status as it is only dictated by the practical consideration that experienced construction workers are more preferred. In Ando's case, he was rehired precisely because of his previous experience working with the other phases of the project. EGI took into account similarity of working environment.

APPEARANCES OF COUNSEL

Jose Oscar M. Salazar for petitioners.
Public Attorney's Office for respondent.

D E C I S I O N

PERALTA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure *(Rules)* seeks to reverse the February 28, 2014 Decision[1] and September 4, 2014 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 126624, which annulled the Resolutions dated May 25, 2012[3] and July 17, 2012[4] of the National Labor Relations Commission (*NLRC*) which affirmed *in toto* the December 29, 2011 Decision[5] of the Labor Arbiter.

On May 16, 2011, respondent Fortunato B. Ando, Jr. *(Ando)* filed a complaint[6] against petitioner E. Ganzon, Inc. *(EGI)* and its President, Eulalio Ganzon, for illegal dismissal and money claims for: underpayment of salary, overtime pay, and 13th month pay; non-payment of holiday pay and service incentive leave; illegal deduction; and attorneys fees. He alleged that he was a regular employee working as a finishing carpenter in the construction business of EGI; he was repeatedly hired from January 21, 2010 until April 30, 2011 when he was terminated without prior notice and hearing; his daily salary of ₱292.00 was below the amount required by law; and wage deductions were made without his consent, such as rent for the barracks located in the job site and payment for insurance premium.

EGI countered that, as proven by the three (3) project employment contract, Ando was engaged as a project worker (Formworker-2) in Bahay Pamulinawen Project in Laoag, Ilocos

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[1] Penned by Associate Justice Romeo F. Barza, with Associate Justices Hakim S. Abdulwahid and Ramon A. Cruz concurring; *rollo*, pp. 24-34.

[2] *Rollo*, pp. 36-37.

[3] *Id.* at 77-84, 203-210; CA *rollo*, pp. 122-129.

[4] *Id*. at 224; *id*. at 144-145.

[5] *Id*. at 51-60, 167-176.

[6] *Id*. at 97-98.

Norte from June 1, 2010 to September 30, 2010[7] and from January 3, 2011 to February 28, 2011[8] as well as in EGI-West Insula Project in Quezon City, Metro Manila from February 22, 2011 to March 31, 2011;[9] he was paid the correct salary based on the Wage Order applicable in the region; he already received the13th month pay for 2010 but the claim for 2011 was not yet processed at the time the complaint was filed; and he voluntarily agreed to pay ₱500.00 monthly for the cost of the barracks, beds, water, electricity, and other expenses of his stay at the job site.

The Labor Arbiter declared Ando a project employee of EGI but granted some of his money claims. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered Dismissing the complaint for illegal dismissal for lack of merit.

However, respondents are ordered to pay jointly and severally complainant Fortunato Ando, Jr.

a.) underpayment of salary:
From 2/22/11 – 4/30/11

b.) Holiday pay:
From 1/21/10 – 4/30/11

c.) Service incentive leave pay:
From 1/21/10 – 4/30/11

d.) Proportionate 13th month pay
From 1/1/11 – 4/30/11

The computation of the Computation and Examination Unit of this Office is made part of this Decision.

SO ORDERED.[10]

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[7] *Id*. at 145.

[8] *Id*. at 146.

[9] *Id*. at 125.

[10] *Id*. at 59, 175.

Both parties elevated the case to the NLRC,[11] which dismissed the appeals filed and affirmed *in toto* the Decision of the Labor Arbiter. Ando filed a motion for reconsideration,[12] but it was denied. Still aggrieved, he filed a Rule 65 petition before the CA,[13] which granted the same. The *fallo* of the Decision ordered:

> **WHEREFORE,** finding the petition to be impressed with merit, the same is hereby **GRANTED**. The assailed NLRC resolutions dated May 25, 2012 and July 17, 2012, are hereby **ANNULLED** insofar as the matter of illegal dismissal is concerned and a new judgment is hereby **ENTERED** declaring petitioner Fortunato Ando, Jr. illegally dismissed from work. Private respondent E. Ganzon, Inc. (EGI) is hereby **ORDERED** to pay petitioner Ando, Jr. his full backwages inclusive of his allowances and other benefits computed from April 30, 2011 (the date of his dismissal) until finality of this decision. EGI is further ordered to pay petitioner Ando, Jr. separation pay equivalent to one month salary.
>
> The award of petitioner Ando, Jr.'s money claims granted by the Labor Arbiter and affirmed by the NLRC is **SUSTAINED**.
>
> **SO ORDERED**.[14]

EGI's motion for reconsideration[15] was denied; hence, this case.

The petition is meritorious.

In labor cases, Our power of review is limited to the determination of whether the CA correctly resolved the presence or absence of grave abuse of discretion on the part of the NLRC. The Court explained this in *Montoya v. Transmed Manila Corporation*:[16]

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[11] *Id*. at 62-75, 177-190, 192-200.

[12] *Id*. at 211-223.

[13] *Id*. at 85-94.

[14] *Id*. at 33. (Emphasis in the original)

[15] *Id*. at 238-250.

[16] 613 Phil. 696 (2009).

x x x In a Rule 45 review, we consider the **correctness of the assailed CA decision**, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.** In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. **In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?**[17]

Errors of judgment are not within the province of a special civil action for *certiorari* under Rule 65, which is merely confined to issues of jurisdiction or grave abuse of discretion.[18] Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction.[19] To be considered "grave," discretion must be exercised in a despotic manner by reason of passion or personal hostility, and

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[17] *Montoya v. Transmed Manila Corporation, supra*, at 707. (Citations omitted; emphasis supplied). See also *Holy Child Catholic School v. Sto. Tomas*, G.R. No. 179146, July 23, 2013; *Niña Jewelry Manufacturing of Metal Arts, Inc. v. Montecillo*, 677 Phil. 447, 464 (2011); *Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East Zone Union v. Manila Water Company, Inc.*, 676 Phil. 262, 273-274 (2011); *Phimco Industries, Inc. v. Phimco Industries Labor Association (PILA)*, 642 Phil. 275, 288 (2010); and *Mercado v. AMA Computer College-Parañaque City, Inc.*, 632 Phil. 228, 248 (2010).

[18] *Cocomangas Hotel Beach Resort and/or Munro v. Visca, et al.,* 585 Phil. 696, 704 (2008).

[19] *Quebral v. Angbus Construction, Inc.,* G.R. No. 221897, November 7, 2016; *Dacles v. Millenium Erectors Corp.,* G.R. No. 209822, July 8, 2015; and *Omni Hauling Services, Inc. v. Bon,* G.R. No. 199388, September 3, 2014, 734 SCRA 270, 277.

must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[20] In labor disputes, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions reached are not supported by substantial evidence or are in total disregard of evidence material to or even decisive of the controversy; when it is necessary to prevent a substantial wrong or to do substantial justice; when the findings of the NLRC contradict those of the LA; and when necessary to arrive at a just decision of the case.[21]

In the case at bar, We hold that the CA erred in ruling that the NLRC gravely abused its discretion when it sustained the Labor Arbiter's finding that Ando is not a regular employee but a project employee of EGI.

The terms **regular**, **project**, **seasonal** and **casual** employment are taken from Article 280[22] of the Labor Code, as amended.

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[20] *Quebral v. Angbus Construction, Inc.,* G.R. No. 221897, November 7, 2016; *Dacles v. Millenium Erectors Corp.,* G.R. No. 209822, July 8, 2015; and *Omni Hauling Services, Inc. v. Bon, supra*.

[21] See *Quebral v. Angbus Construction, Inc.,* G.R. No. 221897, November 7, 2016; *Dacles v. Millenium Erectors Corp.,* G.R. No. 209822, July 8, 2015; *Omni Hauling Services, Inc. v. Bon, supra*; and *Cocomangas Hotel Beach Resort and/or Munro v. Visca, et al.,* 585 Phil. 696, 705-706 (2008).

[22] ARTICLE 280. *Regular and casual employment.* – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity actually exist.

In addition, *Brent School, Inc. v. Zamora*[23] ruled that **fixed-term** employment contract is not *per se* illegal or against public policy.[24] Under Art. 280, project employment is one which "has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee." To be considered as project-based, the employer has the burden of proof to show that: *(a)* the employee was assigned to carry out a specific project or undertaking and *(b)* the duration and scope of which were specified at the time the employee was engaged for such project or undertaking.[25] It must be proved that the particular work/service to be performed as well as its duration are defined in the employment agreement and made clear to the employee who was informed thereof at the time of hiring.[26]

The activities of project employees **may or may not** be usually necessary or desirable in the usual business or trade of the employer. In *ALU-TUCP v. National Labor Relations Commission*,[27] two (2) categories of project employees were distinguished:

> In the realm of business and industry, we note that "project" could refer to one or the other of at least two (2) distinguishable types of activities. Firstly, a project could refer to a particular job or undertaking that is within the regular or usual business of the employer company,

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[23] 260 Phil. 747 (1990).

[24] *GMA Network, Inc. v. Pabriga*, *et al.,* 722 Phil. 161, 170 (2013) and *Leyte Geothermal Power Progressive Employees Union-ALU-TUCP v. PNOC-Energy Dev't. Corp,* 662 Phil. 225, 233 (2011).

[25] *Felipe v. Danilo Divina Tamayo Konstract, Inc. (DDTKI) and/or Tamayo,* G.R. No. 218009, September 21, 2016; *Dacles v. Millenium Erectors Corp.,* G.R. No. 209822, July 8, 2015;*Omni Hauling Services, Inc. v. Bon, supra* note 19, at 279; *Alcatel Phils., Inc., et al. v. Relos,* 609 Phil. 307, 314 (2009); and *Abesco Construction and Dev't. Corp. v. Ramirez,* 521 Phil. 160, 165 (2006).

[26] See *Caseres v. Universal Robina Sugar Milling Corp. (URSUMCO) and/or Cabate,* 560 Phil. 615, 620 (2007) and *Abesco Construction and Dev't. Corp. v. Ramirez,* 521 Phil. 160, 165 (2006).

[27] G.R. No. 109902, August 2, 1994, 234 SCRA 678.

but which is distinct and separate, and identifiable as such, from the other undertakings of the company. Such job or undertaking begins and ends at determined or determinable times. The typical example of this first type of project is a particular construction job or project of a construction company. x x x. Employees who are hired for the carrying out of one of these separate projects, the scope and duration of which has been determined and made known to the employees at the time of employment, are properly treated as "project employees," and their services may be lawfully terminated at completion of the project.

The term "project" could also refer to, secondly, a particular job or undertaking that is *not* within the regular business of the corporation. Such a job or undertaking must also be identifiably separate and distinct from the ordinary or regular business operations of the employer. The job or undertaking also begins and ends at determined or determinable times. x x x[28]

As the assigned project or phase **begins and ends at determined or determinable times**, the services of the project employee may be lawfully terminated at its completion.[29]

In this case, the three project employment contracts signed by Ando explicitly stipulated the agreement "to engage [his] services as a Project Worker"[30] and that:

5. [His] services with the Project will end upon completion of the phase of work for which [he was] hired for and is tentatively set on

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[28] *ALU-TUCP v. National Labor Relations Commission, supra,* at 685-686. See also *Felipe v. Danilo Divina Tamayo Konstract, Inc. (DDTKI) and/or Tamayo,* G.R. No. 218009, September 21, 2016; *Omni Hauling Services, Inc. v. Bon, supra* note 19, at 279; *GMA Network, Inc. v. Pabriga, et al.,supra* note 24, at 171-172; *Leyte Geothermal Power Progressive Employees Union-ALU-TUCP v. PNOC-Energy Dev't. Corp,* 662 Phil. 225, 237 (2011); and *Villa v. NLRC,* 348 Phil. 116, 143 (1998).

[29] See *Felipe v. Danilo Divina Tamayo Konstract, Inc. (DDTKI) and/or Tamayo,* G.R. No. 218009, September 21, 2016; *Dacles v. Millenium Erectors Corp.,* G.R. No. 209822, July 8, 2015; *Omni Hauling Services, Inc. v. Bon, supra* note 19, at 278-279; *Alcatel Phils., Inc., et al. v. Relos,* 609 Phil. 307, 314 (2009); and *Caseres v. Universal Robina Sugar Milling Corp. (URSUMCO) and/or Cabate, supra* note 26, at 620.

[30] *Rollo*, pp. 125, 145-146.

(written date). However, this could be extended or shortened depending on the work phasing.[31]

The CA opined that Ando's contracts do not bear the essential element of a project employment because while his contracts stated the period by which he was engaged, his tenure remained indefinite. The appellate court ruled that the stipulation that his services "could be extended or shortened depending on the work phasing" runs counter to the very essence of project employment since the certainty of the completion or termination of the projects is in question. It was noted that, based on Ando's payslips, his services were still engaged by EGI even after his contracts expired. These extensions as well as his repeated rehiring manifested that the work he rendered are necessary and desirable to EGI's construction business, thereby removing him from the scope of project employment contemplated under Article 280.

We do not agree.

Records show that Ando's contracts for Bahay Pamulinawen Project were extended until December 31, 2010[32] (from the original stated date of September 30, 2010) and shortened to February 15, 2011[33] (from the original stated date of February 28, 2011) while his services in West Insula Project was extended until April 30, 2011[34] (from the original stated date of March 31, 2011). These notwithstanding, he is still considered as a project, not regular, employee of EGI.

A project employment contract is valid under the law.

> x x x By entering into such a contract, an employee is deemed to understand that his employment is coterminous with the project. He may not expect to be employed continuously beyond the completion of the project. It is of judicial notice that project employees engaged

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[31] *Id.*

[32] *Id.* at 106-108, 111.

[33] *Id.* at 43, 46, 110, 137, 140, 230-231, 242, 245-246, 248-249.

[34] *Id.* at 44, 109, 111, 138, 231, 242, 245, 249.

for manual services or those for special skills like those of carpenters or masons, are, as a rule, unschooled. However, this fact alone is not a valid reason for bestowing special treatment on them or for invalidating a contract of employment. Project employment contracts are not lopsided agreements in favor of only one party thereto. The employer's interest is equally important as that of the employee's for theirs is the interest that propels economic activity. While it may be true that it is the employer who drafts project employment contracts with its business interest as overriding consideration, such contracts do not, of necessity, prejudice the employee. Neither is the employee left helpless by a prejudicial employment contract. After all, under the law, the interest of the worker is paramount.[35]

The Court has upheld the validity of a project-based contract of employment provided that the period was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever is being exercised by the former over the latter; and it is apparent from the circumstances that the period was not imposed to preclude the acquisition of tenurial security by the employee.[36] Otherwise, such contract should be struck down as contrary to public policy, morals, good custom or public order.[37]

Here, Ando was adequately notified of his employment status at the time his services were engaged by EGI for the Bahay Pamulinawen and the West Insula Projects. The contracts he

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[35] *Villa v. NLRC, supra* note 28, at 141, as cited in *Caseres v. Universal Robina Sugar Milling Corp. (URSUMCO) and/or Cabate, supra* note 26, at 622 and *Leyte Geothermal Power Progressive Employees Union-ALU-TUCP v. PNOC-Energy Dev't. Corp, supra* note 28, at 234.

[36] See *Salinas, Jr. v. NLRC,* 377 Phil. 55, 63-64 (1999), citing *Caramol v. National Labor Relations Commission,* G.R. No. 102973, August 24, 1993, 225 SCRA 582, 586. See also *Hanjin Heavy Industries and Construction Co. Ltd., et al. v. Ibañez, et al.,* 578 Phil. 497, 511 (2008).

[37] See *Salinas, Jr. v. NLRC, supra,* citing *Caramol v. National Labor Relations Commission, supra,* at 586.

signed consistently stipulated that his services as a project worker were being sought. There was an informed consent to be engaged as such. His consent was not vitiated. As a matter of fact, Ando did not even allege that force, duress or improper pressure were used against him in order to agree. His being a carpenter does not suffice.

There was no attempt to frustrate Ando's security of tenure. His employment was for a specific project or undertaking because the nature of EGI's business is one which will not allow it to employ workers for an indefinite period. As a corporation engaged in construction and residential projects, EGI depends for its business on the contracts it is able to obtain. Since work depends on the availability of such contracts, necessarily the duration of the employment of its work force is not permanent but coterminous with the projects to which they are assigned and from whose payrolls they are paid. [38] It would be extremely burdensome for EGI as an employer if it would have to carry them as permanent employees and pay them wages even if there are no projects for them to work on.[39]

Project employment should not be confused and interchanged with *fixed-term* employment:

> x x x While the former requires a *project* as restrictively defined above, the duration of a fixed-term employment agreed upon by the parties may be any *day certain,* which is understood to be "that which must necessarily come although it may not be known when." The decisive determinant in fixed-term employment is not the activity that the employee is called upon to perform but the day certain agreed upon by the parties for the commencement and termination of the employment relationship.[40]

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[38] See *Caseres v. Universal Robina Sugar Milling Corp. (URSUMCO) and/or Cabate, supra* note 26, at 622-623 and *Cartagenas v. Romago Electric Co., Inc.,* 258 Phil. 445, 449-450 (1989).

[39] See *Caseres v. Universal Robina Sugar Milling Corp. (URSUMCO) and/or Cabate, supra* note 26, at 622-623 and *Cartagenas v. Romago Electric Co., Inc., supra,* at 449-450.

[40] *GMA Network, Inc. v. Pabriga, et al., supra* note 24, at 177-178. (Citations omitted).

The decisive determinant in project employment is the activity that the employee is called upon to perform and not the day certain agreed upon by the parties for the commencement and termination of the employment relationship. Indeed, in *Filsystems, Inc. v. Puente,*[41] We even ruled that an employment contract that does not mention particular dates that establish the specific duration of the project does not preclude one's classification as a project employee.

In this case, the duration of the specific/identified undertaking for which Ando was engaged was reasonably determinable. Although the employment contract provided that the stated date may be "extended or shortened depending on the work phasing," it specified the termination of the parties' employment relationship on a "day certain," which is "upon completion of the phase of work for which [he was] hired for."[42]

> A "day" x x x is understood to be that which must necessarily come, although is may not be known exactly when. This means that where the final completion of a project or phase thereof is in fact determinable and the expected completion is made known to the employee, such project employee may not be considered regular, notwithstanding the one-year duration of employment in the project or phase thereof or the one-year duration of two or more employments in the same project or phase of the project.
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> The completion of the project or any phase thereof is determined on the date originally agreed upon or the date indicated in the contract, or if the same is extended, the date of termination of project extension.[43]

Ando's tenure as a project employee remained definite because there was certainty of completion or termination of the Bahay Pamulinawen and the West Insula Projects. The project employment contracts sufficiently apprised him that his security

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[41] 493 Phil. 923 (2005).

[42] *Rollo*, pp. 125, 145-146.

[43] Section 3.3 (a) of DOLE Department Order No. 19, Series of 1993 (*Guidelines Governing the Employment of Workers in the Construction Industry*).

of tenure with EGI would only last as long as the specific projects he was assigned to were subsisting. When the projects were completed, he was validly terminated from employment since his engagement was coterminous thereto.

The fact that Ando was required to render services necessary or desirable in the operation of EGI's business for more than a year does not in any way impair the validity of his project employment contracts. Time and again, We have held that the length of service through repeated and successive rehiring is not the controlling determinant of the employment tenure of a project employee.[44] The rehiring of construction workers on a project-to-project basis does not confer upon them regular employment status as it is only dictated by the practical consideration that experienced construction workers are more preferred.[45] In Ando's case, he was rehired precisely because of his previous experience working with the other phases of the project. EGI took into account similarity of working environment. Moreover –

> x x x It is widely known that in the construction industry, a project employee's work depends on the availability of projects, necessarily the duration of his employment. It is not permanent but coterminous with the work to which he is assigned. It would be extremely burdensome for the employer, who depends on the availability of projects, to carry him as a permanent employee and pay him wages even if there are no projects for him to work on. The rationale behind this is that once the project is completed it would be unjust to require the employer to maintain these employees in their payroll. To do so would make the employee a privileged retainer who collects payment from his employer for work not done. This is extremely unfair to the

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[44] See *Dacles v. Millenium Erectors Corp.,* G.R. No. 209822, July 8, 2015; *Alcatel Phils., Inc., et al. v. Relos, supra* note 25, at 314; *Caseres v. Universal Robina Sugar Milling Corp. (URSUMCO) and/or Cabate, supra* note 26, at 622-623; *Abesco Construction and Dev't. Corp. v. Ramirez,* 521 Phil. 160, 164 (2006); and *Cioco, Jr. v. C.E. Construction Corp.,* 481 Phil. 270, 276 (2004).

[45] See *Felipe v. Danilo Divina Tamayo Konstract, Inc. (DDTKI) and/or Tamayo,* G.R. No. 218009, September 21, 2016; *Filsystems, Inc. v. Puente, supra* note 41, at 934; and *Cioco, Jr. v. C.E. Construction Corp., supra.*

employers and amounts to labor coddling at the expense of management.[46]

Finally, the second paragraph of Article 280, stating that an employee who has rendered service for at least one (1) year shall be considered a regular employee, is applicable only to a casual employee and not to a project or a regular employee referred to in paragraph one thereof.[47]

The foregoing considered, EGI did not violate any requirement of procedural due process by failing to give Ando advance notice of his termination. Prior notice of termination is not part of procedural due process if the termination is brought about by the completion of the contract or phase thereof for which the project employee was engaged.[48] Such completion automatically terminates the employment and the employer is, under the law, only required to render a report to the Department of Labor and Employment *(DOLE)* on the termination of employment.[49] In this case, it is undisputed that EGI submitted the required Establishment Employment Reports to DOLE-NCR Makati/ Pasay Field Office regarding Ando's "temporary lay-off" effective February 16, 2011 and "permanent termination" effective May 2, 2011.[50]

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[46] *Malicdem v. Marulas Industrial Corporation,* G.R. No. 204406, February 26, 2014, 717 SCRA 563, 574-575 (Citations omitted). See also *Dacles v. Millenium Erectors Corp.,* G.R. No. 209822, July 8, 2015.

[47] *Mercado, Sr. v. NLRC, 3rd Div.*, 278 Phil. 345, 357 (1991), as cited in *Leyte Geothermal Power Progressive Employees Union-ALU-TUCP v. PNOC-Energy Dev't. Corp, supra* note 28, at 238; *Fabela v. San Miguel Corp.,* 544 Phil. 223, 231 (2007); *Benares v. Pancho,* 497 Phil. 181, 190 (2005); *Phil. Fruit & Vegetable Industries, Inc. v. NLRC,* 369 Phil. 929, 938 (1999); *Palomares v. NLRC,* 343 Phil. 213, 224 (1997); *Raycor Aircontrol Systems, Inc. v. NLRC,* 330 Phil. 306, 326-327 (1996); *Cosmos Bottling Corporation v. NLRC,* 325 Phil. 663, 672 (1996); *ALU-TUCP v. National Labor Relations Commission, supra* note 27, at 688; and *Fernandez v. National Labor Relations Commission,* G.R. No. 106090, February 28, 1994, 230 SCRA 460, 466.

[48] *D.M. Consunji, Inc. v. Gorres, et al.,* 641 Phil. 267, 280 (2010).

[49] *Id*. at 279, citing *Cioco, Jr. v. C.E. Construction Corp., supra* note 44, at 277-278.

[50] *Rollo*, pp. 147-151.

WHEREFORE, premises considered, the petition is **GRANTED**. The February 28, 2014 Decision and September 4, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 126624, which annulled the Resolutions dated May 25, 2012 and July 17, 2012 of the National Labor Relations Commission which affirmed *in toto* the December 29, 2011 Decision of the Labor Arbiter, are **REVERSED AND SET ASIDE**. The Decision of the Labor Arbiter is **REINSTATED**.

SO ORDERED.

Carpio (Chairperson), *Mendoza, Leonen,* and *Jardeleza, JJ.,* concur.

EN BANC

[A.M. No. 2016-03-SC. February 21, 2017]

Re: Illegal and Unauthorized Digging and Excavation Activities Inside the Supreme Court Compound, Baguio City.

[A.M. No. 16-06-07-SC. February 21, 2017]

Re: Investigation Report on the Alleged Unauthorized Digging and Excavation Activities within the Supreme Court Compound in Baguio City.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; MISCONDUCT, DEFINED; ELEMENTS TO CONSTITUTE GRAVE MISCONDUCT, EXPLAINED.— "Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful

behavior or gross negligence by a public officer." To constitute as grave misconduct, "the elements of corruption, clear intent to violate the law or flagrant disregard of established rules, must be manifest and established by substantial evidence." Corruption, as an element of grave misconduct, is present when an official or fiduciary person unlawfully and wrongfully uses his station or character *to procure some benefit* for himself or for another person, contrary to duty and the rights of others. For misconduct to warrant removal from office of an officer, the act should directly relate to or be connected with the performance of the official functions and duties of a public officer amounting either to maladministration or to willful, intentional neglect and failure to discharge the duties of the office.

2. ID.; ID.; ID.; ILLEGAL AND UNAUTHORIZED DIGGING AND EXCAVATION ACTIVITIES TO LOOK FOR TREASURES ON THE SUPREME COURT COMPOUND CONSTITUTE GRAVE MISCONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.— [I]t is clear that Hallera and Carbonel took advantage of their positions as casual utility workers assigned as the caretakers of Cottages J and F, respectively, in order to engage in treasure-hunting activities in search for hidden Japanese treasures on the SC Compound-BC grounds. These actions could only have been perpetrated for their own personal enrichment, considering that such activities were covertly carried out without the knowledge and permission of the Court. Note, too, that when Hallera and Carbonel engaged in these treasure-hunting activities, they violated Section 1 of the Code of Conduct for Court Personnel which mandates court personnel to perform their official duties properly and with diligence at all times and to commit themselves exclusively to the business and responsibilities of their office during working hours. Consequently, we hold Hallera and Carbonel administratively liable for grave misconduct for participating in illegal and unauthorized digging and excavation activities within the SC Compound-BC, and for conduct prejudicial to the best interest of the service, as their actions unquestionably tarnish the image and integrity of his/her public office.

3. ID.; ID.; ID.; ID.; PROPER PENALTY; IMMEDIATE TERMINATION OF CASUAL EMPLOYMENT IN LIEU

OF DISMISSAL, IMPOSED.— Section 46, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) classifies grave misconduct and conduct prejudicial to the best interest of the service as grave offenses, with the corresponding penalties of dismissal from the service and suspension of six (6) months and one (1) day to one (1) year for the first offense, respectively. Given the gravity and seriousness of the offense they committed, we deem it proper to impose the penalty for the more serious offense in accordance with Section 50, Rule 10 of the RRACCS[.] x x x Considering however the nature of employment of Hallera and Carbonel, who are both casual employees, the appropriate penalty is the immediate termination of their casual employment, in lieu of dismissal from service.

4. ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY; FAILURE TO ACT APPROPRIATELY UPON HAVING BEEN INFORMED ABOUT THE UNAUTHORIZED EXCAVATION ACTIVITIES AMOUNTS TO SIMPLE NEGLECT OF DUTY; LENGTH OF SERVICE CONSIDERED AS MITIGATING FACTOR TO TEMPER THE PENALTY; SUSPENSION FOR TWO (2) YEARS WITHOUT PAY IMPOSED INSTEAD OF DISMISSAL.— As for the administrative liability of Engr. Sanchez, we find him guilty of simple neglect of duty for his failure to act appropriately upon having been informed about the unauthorized excavation activities near Cottage J. It is simply inexcusable that upon learning of the existence of the digging site near the cottage, he directed the site's immediate closure *without initiating an investigation on the matter* to determine whether those involved in the excavation activities should be administratively sanctioned, or at the very least, *without reporting the incident to higher management for proper action.* "Simple neglect of duty x x x signifies a disregard of a duty resulting from carelessness or indifference." It is classified as a less grave offense punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense. Given his record of having been previously fined in the amount of ₱5,000.00 for simple neglect of duty in an earlier case, and severely warned for failure to observe the established procedure in the purchase of equipment for the use of the Court, the imposable penalty

for this second offense against Engr. Sanchez is dismissal from the service. However, while the Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, it also has the discretion to temper the harshness of its judgment with mercy. In fact, in several jurisprudential precedents, the Court has refrained from imposing the actual administrative penalties prescribed by law or regulation in the presence of *mitigating factors*. In this case, the Court takes into consideration Engr. Sanchez' long years of service in the Judiciary of about ten (10) years as a mitigating factor that serves to temper the penalty to be imposed on him. Thus, instead of imposing the penalty of dismissal, we hold that the penalty of suspension for two (2) years without pay is proper and commensurate.

D E C I S I O N

***PER CURIAM*:**

This administrative matter refers to the illegal and unauthorized digging and excavation activities inside the Supreme Court Compound in Baguio City (SC Compound-BC).

The present case is rooted on a complaint[1] dated January 6, 2016 filed by Elvie A. Carbonel (Carbonel), casual Utility Worker II, Maintenance Unit, SC Compound-BC, before the Office of Administrative Services (OAS) against Engr. Teofilo G. Sanchez (Engr. Sanchez), SC Supervising Judicial Staff Officer and Officer-in-Charge of the Maintenance Unit, and Edgardo Z. Hallera (Hallera), casual Utility Worker II of the same unit, for grave misconduct relating to the illegal and unauthorized digging and excavation activity allegedly conducted outside the cottages of Associate Justices Presbitero J. Velasco, Jr., (Cottage J) and Martin S. Villarama, Jr., (Cottage F).[2]

The complaint alleged that: *first,* Engr. Sanchez ordered Hallera to conduct excavation activities near the Cottages F and J[3] to search

[1] *Rollo,* A.M. No. 2016-03-SC, pp. 631-633.

[2] Cottage F is presently occupied by Associate Justice Estela M. Perlas-Bernabe.

[3] *Rollo*, A.M. No. 2016-03-SC, p. 631.

for hidden Japanese treasures;[4] and *second,* due to the said excavation activities in the area, the structural soundness of the foundation of the cottages was compromised.[5]

On January 8, 2016, the OAS sent a three-man team composed of its personnel to the SC Compound-BC to determine the veracity of the complaint. The team found no apparent signs of disturbance on the ground or traces of recent excavation and excavated soil on the site during its initial investigation; nevertheless, it recommended that a formal investigation be conducted after several employees admitted that there was a hole which was deliberately concealed by Hallera.[6]

On January 11, 2016, the OAS furnished Engr. Sanchez and Hallera with a copy of the complaint and directed them to submit their respective comments within five days from notice.

In his Memorandum[7] dated January 14, 2016, Engr. Sanchez categorically denied that he surreptitiously ordered Hallera to dig and excavate within the compound to search for hidden Japanese treasures. He insisted that Carbonel made exaggerations as to the depth of the hole, considering that only the tip of the ten-foot high ladder is shown in the photograph. He also doubted Carbonel's allegation that the structural soundness of the cottages was affected by the excavation activities, since the latter is no expert on building structures and foundations.

Hallera likewise denied the accusations hurled against him in his *Sinumpaang Salaysay*[8] dated January 14, 2016. He explained that he dug a hole near Cottage J with a depth of four feet in order to get fertile soil for use in the garden, but he claimed that the excavation could not have compromised the structural soundness and stability of the cottage.

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[4] *Id*. at 631-A.

[5] *Id.*

[6] *Id*. at 3-4.

[7] *Id*. at 620-621.

[8] *Id*. at 622-623.

Aside from the internal investigation conducted by the OAS, the matter also became the subject of a separate investigation of the National Bureau of Investigation (NBI), through its regional office in the Cordillera Administrative Region (CAR), Baguio City, in response to the Letter[9] dated March 1, 2016 of Associate Justice Marvic Mario Victor F. Leonen, requesting assistance for the conduct of an independent investigation regarding the alleged unauthorized digging and excavation activities within the SC Compound-BC.

The Report and Recommendation of the NBI

In a Final Report[10] dated June 7, 2016, the NBI concluded that there were two unauthorized excavation sites within the SC Compound-BC: the *first* was located below the stairs going to the 2nd level of Cottage F, and the *second* was at the front yard of Cottage J.

The NBI found that the excavation in Cottage F, which occurred sometime in 2013-2014, involved Hallera and Carbonel, with the latter employed as the caretaker of the cottage at that time. On this point, the NBI relied on the testimony of Danilo V. Julio (Julio), a maintenance personnel assigned to Cottages E and D, who stated that when he was called by Hallera to Cottage F to check on the hole, it was Carbonel who pointed to the stockroom under the stairs and insisted that the metal detector had a strong signal in that area.[11]

Hallera, too, affirmed Julio's statements and admitted that the purpose of the excavation was to look for hidden Japanese treasures. He however claimed that he only followed Carbonel's instructions to prove that there was no treasure therein.[12]

The NBI further reported that the excavation near Cottage J happened sometime in 2014 until April 2015, and it involved Engr. Sanchez and Hallera. The entrance of the hole, which was supported

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[9] *Id*. at 47.

[10] *Id*. at 33-46.

[11] *Id*. at 40.

[12] *Id*.

by a wooden frame, was about two by three feet in circumference. The circumference got narrower as the hole went deeper, but the actual depth of the excavation and whether there were branching tunnels could not be determined.[13]

As for the participation of Engr. Sanchez, the NBI cited the testimony of Elvis L. De Guzman (De Guzman), a casual utility worker, who recounted that when he reported Hallera's digging activities near Cottage J to Engr. Sanchez in 2014, the latter told him *"[m]alalim na pala ano. Hayaan mo lang siya, alam naman niya ginagawa niya, huwag niyo nalang pakialaman."*[14] De Guzman also testified that during the Supreme Court Summer Session in 2015, he saw Engr. Sanchez assisting Hallera at the digging site by holding a flashlight while the latter prepared to go down the hole.[15]

Upon the NBI's inquiry, the National Museum of the Philippines confirmed that no person was issued with the requisite permit to conduct treasure-hunting activities within the vicinity of the SC Compound-BC.[16] Consequently, the NBI recommended that Engr. Sanchez, Hallera and Carbonel be charged with violation of Section 48 of Republic Act No. 10066, or the National Cultural Heritage Act of 2009, on top of their administrative liabilities for grave misconduct and conduct prejudicial to the best interest of the service.[17]

On July 5, 2016, the Court *en banc* issued a resolution referring the NBI's Final Report to Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief Administrative Officer, for consolidation with the findings and result of the internal investigation conducted by the Complaints and Investigation Division of the OAS.[18]

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[13] *Id*. at 40-41.

[14] *Id*. at 42.

[15] *Id*.

[16] *Id.* at 38.

[17] *Id*. at 44-45.

[18] *Id*. at 27.

The Report and Recommendation of the OAS

The OAS adopted, albeit with modification, the NBI's findings and conclusions.

In its Consolidated Report[19] dated September 19, 2016, the OAS found sufficient basis to hold Hallera and Carbonel administratively liable for grave misconduct and conduct prejudicial to the best interest of the service for their participation in the treasure-hunting activities in the SC Compound-BC.[20] However, it found the allegation against Engr. Sanchez of his involvement in the treasure-hunting activities unsubstantiated. Thus, it recommended the dismissal of the administrative case against Engr. Sanchez for lack of evidence.[21]

The OAS explained that De Guzman's testimony as to the participation of Engr. Sanchez in the excavation near Cottage J was neither corroborated nor confirmed by the evidence. It also pointed out that De Guzman could have been impelled by improper motives or vengeance when he testified against Engr. Sanchez, given the unfavorable treatment he received from the latter in the past.[22]

Accordingly, the OAS recommended that Hallera and Carbonel be found guilty of grave misconduct and conduct prejudicial to the best interest of the service for having been directly involved in the illegal and unauthorized digging and excavation in Cottages F and J, and be imposed the penalty of dismissal from the service, with forfeiture of all benefits, except accrued leave benefits, and with prejudice to reinstatement or reappointment to any public office, including government-owned or controlled corporations.[23]

Insofar as Engr. Sanchez is concerned, the OAS found him liable for simple neglect of duty for his failure to act prudently or to take

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[19] *Id*. at 2-24.

[20] *Id.* at 17-18.

[21] *Id*. at 18-19.

[22] *Id*. at 18-19.

[23] *Id*. at 23-24.

the appropriate course of action upon receiving information regarding the excavation near Cottage J. The OAS thus recommended that he be suspended for one year without pay.[24]

The OAS likewise recommended that Engr. Sanchez be required to show cause why he should not be administratively dealt with for an alleged incident regarding the missing pine lumber which is considered to be Supreme Court property.[25]

The Court's Ruling

After a careful review of the records of the case, we find reasonable grounds to hold Hallera and Carbonel administratively liable for grave misconduct and conduct prejudicial to the best interest of the service, and Engr. Sanchez for simple neglect of duty.

"Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."[26] To constitute as grave misconduct, "the elements of corruption, clear intent to violate the law or flagrant disregard of established rules, must be manifest and established by substantial evidence."[27]

Corruption, as an element of grave misconduct, is present when an official or fiduciary person unlawfully and wrongfully uses his station or character *to procure some benefit* for himself or for another person, contrary to duty and the rights of others.[28]

For misconduct to warrant removal from office of an officer, the act should directly relate to or be connected with the

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[24] *Id.* at 24.

[25] *Id*.

[26] *Office of the Ombudsman v. Castro*, G.R. No. 172637, April 22, 2015, 757 SCRA 73, 85, citing *Civil Service Commission v. Ledesma*, 508 Phil. 569, 579 (2005).

[27] *Id.*, citing *Office of the Ombudsman v. Miedes, Sr.*, 570 Phil. 464, 473 (2008).

[28] *Re: Theft of the Used Galvanized Iron (GI) Sheets in the SC Compound, Baguio City*, 665 Phil. 1, 10 (2011).

performance of the official functions and duties of a public officer amounting either to maladministration or to willful, intentional neglect and failure to discharge the duties of the office.[29]

In the present case, it is clear that Hallera and Carbonel took advantage of their positions as casual utility workers assigned as the caretakers of Cottages J and F, respectively, in order to engage in treasure-hunting activities in search for hidden Japanese treasures on the SC Compound-BC grounds. These actions could only have been perpetrated for their own personal enrichment, considering that such activities were covertly carried out without the knowledge and permission of the Court.

Note, too, that when Hallera and Carbonel engaged in these treasure-hunting activities, they violated Section 1 of the Code of Conduct for Court Personnel which mandates court personnel to perform their official duties properly and with diligence at all times and to commit themselves exclusively to the business and responsibilities of their office during working hours.

Consequently, we hold Hallera and Carbonel administratively liable for grave misconduct for participating in illegal and unauthorized digging and excavation activities within the SC Compound-BC, and for conduct prejudicial to the best interest of the service, as their actions unquestionably tarnish the image and integrity of his/her public office.[30]

Section 46, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) classifies grave misconduct and conduct prejudicial to the best interest of the service as grave offenses, with the corresponding penalties of dismissal from the service, and suspension of six (6) months and one (1) day to one (1) year for the first offense, respectively.

Given the gravity and seriousness of the offense they committed, we deem it proper to impose the penalty for the more serious offense

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[29] See *Pat-og, Sr. v. Civil Service Commission*, 710 Phil. 501, 517 (2013). See also *Manuel v. Judge Calimag, Jr.*, 367 Phil. 162, 166 (1999).

[30] *Pia v. Gervacio,* 710 Phil. 197, 206-207 (2013), citing *Avenido v. Civil Service Commission*, 576 Phil. 654, 662 (2008).

in accordance with Section 50, Rule 10 of the RRACCS which provides:

> Section 50. Penalty for the Most Serious Offense – If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.

Considering however the nature of employment of Hallera and Carbonel, who are both casual employees, the appropriate penalty is the immediate termination of their casual employment, in lieu of dismissal from service.

As for the administrative liability of Engr. Sanchez, we find him guilty of simple neglect of duty for his failure to act appropriately upon having been informed about the unauthorized excavation activities near Cottage J. It is simply inexcusable that upon learning of the existence of the digging site near the cottage, he directed the site's immediate closure *without initiating an investigation on the matter* to determine whether those involved in the excavation activities should be administratively sanctioned, or at the very least, *without reporting the incident to higher management for proper action*.[31]

"Simple neglect of duty x x x signifies a disregard of a duty resulting from carelessness or indifference."[32] It is classified as a less grave offense punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense.[33] Given his record of having been previously fined in the amount of ₱5,000.00 for simple neglect of duty in an earlier case,[34] and severely warned for failure

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[31] *Rollo,* A.M. No. 2016-03-SC, p. 42.

[32] *Clemente v. Bautista*, 710 Phil. 10, 17 (2013).

[33] *Id.* at 18.

[34] *Rollo,* A.M. No. 2016-03-SC, p. 22. See *Re: Report on the Alleged incompetence in the performance of duties of Engr. Teofilo G. Sanchez, Supreme Court (SC) Supervising Judicial Staff Officer and former Officer-in-Charge, Maintenance Unit, SC Compound, Baguio City*, A.M. No. 2016-04-SC, July 20, 2016.

to observe the established procedure in the purchase of equipment for the use of the Court,[35] the imposable penalty for this second offense against Engr. Sanchez is dismissal from the service.

However, while the Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, it also has the discretion to temper the harshness of its judgment with mercy.[36] In fact, in several jurisprudential precedents, the Court has refrained from imposing the actual administrative penalties prescribed by law or regulation in the presence of *mitigating factors*.[37]

In this case, the Court takes into consideration Engr. Sanchez' long years of service in the Judiciary of about ten (10) years[38] as a mitigating factor that serves to temper the penalty to be imposed on him.[39] Thus, instead of imposing the penalty of dismissal, we hold that the penalty of suspension for two (2) years without pay is proper and commensurate.

WHEREFORE, the Court:

1. FINDS Edgardo Z. Hallera, casual Utility Worker II, Maintenance Unit, SC Compound, Baguio City, guilty of grave misconduct, and hereby TERMINATES his casual employment effective immediately, with forfeiture of all

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[35] *Re: Complaint of Mr. Rodrigo P. Itliong against Messrs. Stevenson, Tugas, Roberto Patacsil, Jr., Engr. Teofilo Sanchez and Ms. Elvie Carbonel, relative to Alleged Criminal Activities and Administrative Misconduct with the Supreme Court Compound in Baguio City*, A.M. No. 2009-26-SC, October 12, 2010.

[36] *Cabigao v. Nery*, 719 Phil. 475, 484 (2013), citing *Baculi v. Ugale*, 619 Phil. 686, 692-693 (2009).

[37] *Id.*, citing *Office of the Court Administrator v. Aguilar*, 666 Phil. 11, 23 (2011).

[38] Engr. Sanchez was appointed to the position of Engineer III at the Maintenance Division, Office of Administrative Services of the Supreme Court on January 2, 2007. See *Rollo*, A.M. No. 2006-03-SC, p. 2.

[39] REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, Section 48(n).

benefits, except accrued leave benefits, and with prejudice to reinstatement or reappointment to any public office, including government-owned or controlled corporations.

2. FINDS Elvie A. Carbonel, casual Utility Worker II, Maintenance Unit, SC Compound, Baguio City, guilty of grave misconduct, and hereby TERMINATES her casual employment effective immediately, with forfeiture of all benefits, except accrued leave benefits, and with prejudice to reinstatement or reappointment to any public office, including government-owned or controlled corporations;

3. FINDS Engr. Teofilo G. Sanchez, SC Supervising Judicial Staff Officer and Officer-in-Charge of the Maintenance Unit, SC Compound, Baguio City, guilty of simple neglect of duty, and hereby SUSPENDS him from office for a period of two (2) years without pay, with a FINAL WARNING that a repetition of the same or similar acts will be dealt with more seriously; and,

4. RESOLVES to docket the alleged incident regarding the missing pine lumber as a separate administrative matter to be raffled among the Members of the Court.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Mendoza, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

Reyes, J., on official leave.

EN BANC

[A.M. No. P-16-3593. February 21, 2017]
(Formerly OCA IPI No. 12-3976-P)

ATTY. RAUL Q. BUENSALIDA, CESO III, *complainant, vs.* **MARINEL V. GABINETE, UTILITY WORKER I, Municipal Circuit Trial Court, Lupon-Banaybanay, Davao Oriental,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; GRAVE MISCONDUCT; UNAUTHORIZED TAKING OF REGISTERED MAIL MATTER AND THE SUBSEQUENT DIVERSION OF THE PROCEEDS OF THE CHECKS CONTAINED THEREIN, A CASE OF; PENALTY.— Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official. Misconduct is grave where the elements of corruption, a clear intent to violate the law, or a flagrant disregard of established rules are present. Gabinete's misconduct involved the unauthorized taking of registered mail matter, and the subsequent diversion of the proceeds of the checks contained therein. The elements of corruption, clear intent to violate the law and flagrant disregard for established rules are evidently present. x x x Under Section 46(A)(3), Rule 10 on the Schedule of Penalties of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), grave misconduct is punishable by dismissal from service in the first instance. The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and being barred from taking civil service examinations. While the Court is aware that it may consider circumstances to mitigate the imposable penalty prescribed under the RRACCS, no such circumstance appears from the records of the case.

D E C I S I O N

***PER CURIAM*:**

For resolution is the Memorandum[1] dated November 11, 2015 of the Office of the Court Administrator (OCA), recommending that respondent Marinel V. Gabinete (Gabinete) be found guilty of grave misconduct, and meted the penalty of dismissal from service with forfeiture of all retirement benefits and privileges, except accrued leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

Complainant Raul Q. Buensalida (Buensalida) is the Area Director of Philippine Postal Corporation (PhilPost) for Area 7, Eastern Mindanao. Respondent Gabinete occupies the position of Utility Worker I, and is assigned to the Municipal Circuit Trial Court of Lupon-Banaybanay, Davao Oriental (MCTC).

Sometime in January 2012, Percy A. Olarte (Postmaster Olarte), Postmaster I of the PhilPost Post Office in Lupon, Davao Oriental, discovered that forty-four (44) registered mail items containing refund checks in the total amount of Forty-Eight Thousand Two Hundred Eighty-Five Pesos and 70/100 (₱48,285.70),[2] posted by Philippine Health Insurance Corporation (PHIC) had gone missing.[3]

Immediately thereafter, Postmaster Olarte prepared a letter-report dated January 18, 2012 (Letter Report) detailing the incident.[4]

The Letter Report prompted Buensalida to order the conduct of an investigation. Pursuant to Buensalida's directive, PhilPost's investigating team[5] issued an Investigation Report[6] dated

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[1] *Rollo*, pp. 204-211.

[2] *Id.* at 7-8.

[3] *Id*. at 58.

[4] *Id*. at 5, 58.

[5] Composed of Engr. Joselito G. Bajao, CPSO Ulysses A. Barriga and Elmer P. Obelidhon, Sr.

[6] *Rollo*, pp. 62-64.

September 12, 2012 identifying Gabinete as the culprit, on the basis of the following observations:

> 4. On 19 July 2012, an interview was conducted with MS. ROSE GOROSPE RAMOS, Manager, One Network Bank x x x, Banaybanay Branch. She provided information that some of the reported missing PHIC [c]hecks were negotiated and presented for payment at 3A'[s] Store at Purok 4, Poblacion, Banaybanay, Davao Oriental.
>
> 5. 3A's Store is owned by one MS. MARIETA[7] MEJOS CONSON who readily admitted that she did [encash] the subject PHIC [c]hecks which were presented and negotiated for payment by one MAR[I]NEL GABINETE, a [c]ourt employee from Lupon, Davao Oriental and deposited the same in her bank account at One Network Bank, Banaybanay Branch. Ms. CONSON executed [an] affidavit on 23 July 2012. x x x
>
> 6. Further verification revealed that some missing PHIC checks were deposited at One Network Bank, Lupon Branch.
>
> 7. A check issued to one LUCENA QUEZON was presented and negotiated by her personally at a cooperative in Lupon, Davao Oriental. However, she executed an affidavit that she knows the person of MARINEL GABINETE who personally handed to her the PHILHEALTH Refund Check without the mailing envelope. x x x[8] (Emphasis omitted)

Thereafter, Buensalida sent a letter-complaint[9] (Complaint) dated September 19, 2012 to the Presiding Judge[10] of the MCTC, requesting that the necessary administrative and/or criminal cases be filed against Gabinete in view of the results of the investigation.

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[7] Also spelled as "Marita" in some parts of the records.

[8] *Rollo*, pp. 62-63.

[9] *Id.* at 1-2.

[10] The name of the incumbent judge at the time the Investigation Report was issued does not appear in the records.

On October 11, 2012, the OCA received a copy of the Complaint.[11] Accordingly, the OCA directed Gabinete to file her comment thereto.[12]

In her Comment[13] dated November 23, 2012 (Comment), Gabinete denied the charges against her, and averred that Buensalida is merely using her to cover up the negligence of PhilPost's employees.

In a Resolution[14] dated February 9, 2015, the Court, upon the OCA's recommendation, referred the matter to Judge Emilio G. Dayanghirang III (Judge Dayanghirang), Executive Judge of the Regional Trial Court of Lupon, Davao Oriental (RTC), for full investigation, report and recommendation.

Pursuant to the Court's directive, Judge Dayanghirang heard the case. Buensalida presented the testimonies of (i) 3A's Store owner Marieta Conson (Conson); (ii) PhilPost Investigator Ulysses Barriga (Barriga); (iii) Lucena Quezon (Quezon); and (iv) Postmaster Olarte, along with fourteen (14) affidavits of non-receipt executed by the payees of the missing PHIC checks.[15] Respondent, on the other hand, adopted the allegations in her Comment, and impugned the relevance and reliability of the affidavits of non-receipt.[16] Based on such evidence, the RTC made the following factual findings:

1. Postmaster Olarte and Gabinete were long-time friends, and that because of their close relationship, Gabinete gained access to the former's office and would sometimes help out in sorting letters and scanning records.[17]

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[11] *Id*. at 1, 69.

[12] *Id*. at 65.

[13] *Id*. at 67-68.

[14] *Id.* at 72-73.

[15] Investigation, Report and Recommendation dated May 22, 2015, pp. 2-5; *rollo*, pp. 190-193.

[16] *Id*. at 192-193.

[17] *Id*. at 191.

2. Conson and Gabinete were friends. Gabinete frequently encashed her salary checks at Conson's store. Thus, when Gabinete presented the PHIC checks to her for encashment, she accepted the same without much suspicion.[18]

3. Quezon and Gabinete were childhood friends. Quezon was the payee of one of the PHIC checks which went missing from the Lupon Post Office. According to Quezon, Gabinete personally handed her the PHIC check issued in her name. Quezon no longer bothered to ask how Gabinete got hold of the same, since she was very happy when she received it.[19]

On the basis of the foregoing findings, Judge Dayanghirang issued an Investigation, Report and Recommendation[20] dated May 22, 2015, finding Gabinete guilty of grave misconduct:

WHEREFORE, premises considered, the undersigned finds respondent Marinel V. Gabinete GUILTY OF GRAVE MISCONDUCT.

The undersigned recommends that respondent Marinel V. Gabinete be DISMISSED from service, with forfeiture of all benefits excluding accrued leave credits, if any[,] and with prejudice to re-employment in any branch or agency of the government.

SO ORDERED.[21]

After an evaluation of the records of the case, the submissions of the parties, and Judge Dayanghirang's findings, the OCA made the following recommendation in its Memorandum dated November 11, 2015:

From the established facts and circumstances on record, complainant was more than able to discharge his burden of proving with substantial

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[18] *Id*. at 192.

[19] *Id*.

[20] *Id*. at 189-201.

[21] *Id*. at 201.

evidence that respondent was the one who took the subject PHIC checks and had them encashed.

Preliminarily, this Office notes that the lack of direct evidence does not *ipso facto* bar the finding of liability against respondent. This Office based its findings on the fact that complainant was able to establish respondent's liability through credible and sufficient circumstantial evidence that led to the inescapable conclusion that respondent committed the imputed act.

x x x x x x x x x

First, Postmaster Olarte's testimony sufficiently establishes that respondent had the time and opportunity to take the subject PHIC checks as she had access to the post office being a court employee and long-time friend of Postmaster Olarte.

Second, Ms. Quezon's unequivocal statements that it was respondent who handed the check to her, which was among the missing PHIC checks, confirm respondent's possession thereof.

Third, respondent's possession of the missing PHIC checks was corroborated by Ms. Conson who positively pointed to respondent as the one who negotiated and encashed the subject lost PHIC checks.

x x x x x x x x x

Substantial evidence clearly exists to hold respondent liable for [grave] misconduct punishable by dismissal from the service. Moved by bad faith and dishonesty, respondent took advantage of her friendship with Postmaster Olarte and the latter's unquestioning trust for her own personal gain and benefit. It is just unfortunate that it was the unwitting negligence of Postmaster Olarte in allowing respondent to have access to her office and records that made it possible for respondent to encash the PHIC checks.[22] (Emphasis supplied)

The Court agrees with, and accordingly adopts, the OCA's recommendation.

Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official.[23] Misconduct is grave where

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[22] *Id*. at 207-210.

[23] *Abulencia v. Hermosisima*, 712 Phil. 248, 252 (2013).

the elements of corruption, a clear intent to violate the law, or a flagrant disregard of established rules are present.[24] Gabinete's misconduct involved the unauthorized taking of registered mail matter, and the subsequent diversion of the proceeds of the checks contained therein. The elements of corruption, clear intent to violate the law and flagrant disregard for established rules are evidently present.

As aptly put by Judge Dayanghirang, Gabinete's defense rests solely on her bare denial, which cannot prevail over the positive testimony of Buensalida's witnesses. Such testimonies corroborate one another, and, taken together, positively identify Gabinete as the culprit. In the absence of any showing of any malice or ill-motive on the part of said witnesses, Gabinete's claim that their testimonies were merely fabricated is bereft of merit.[25]

Under Section 46(A)(3), Rule 10 on the Schedule of Penalties of the Revised Rules on Administrative Cases in the Civil Service (RRACCS),[26] grave misconduct is punishable by dismissal from service in the first instance. The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and being barred from taking civil service examinations.[27] While the Court is aware that it may consider circumstances to mitigate the imposable penalty prescribed under the RRACCS, no such circumstance appears from the records of the case.

WHEREFORE, the Court finds respondent Marinel V. Gabinete **GUILTY** of **GRAVE MISCONDUCT**, meriting the penalty of **DISMISSAL** from service, with **FORFEITURE** of retirement and other benefits, except accrued leave credits, and **PERPETUAL DISQUALIFICATION** from re-employment

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[24] *Id*.

[25] *Rollo*, p. 195.

[26] Civil Service Commission Resolution No. 1101502, promulgated on November 8, 2011.

[27] *Id.* at Section 52(a).

in any government agency or instrumentality, including any government-owned and controlled corporation or financial institution. Respondent is further **ORDERED** to immediately **RETURN** to the Philippine Health Insurance Corporation the proceeds of the refund checks subject of this case amounting to Forty-Eight Thousand Two Hundred Eighty-Five Pesos and 70/100 (₱48,285.70) with legal interest at the rate of six percent (6%) *per annum* computed from the date of judicial demand on October 11, 2012, until the date of this Decision. Thereafter, the total amount shall earn interest at the rate of six percent (6%) *per annum*, from the date of this Decision until it is fully paid.

The Office of the Court Administrator shall likewise refer this administrative case and its records to the Ombudsman for whatever action it may take within its jurisdiction.

This Decision shall be immediately executory.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Mendoza, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

Reyes, J., on official leave.

EN BANC

[A.M. No. RTJ-16-2457. February 21, 2017]
(Formerly OCA I.P.I. No. 14-4291-RTJ)

DR. RAUL M. SUNICO, IN HIS CAPACITY AS PRESIDENT OF THE CULTURAL CENTER OF THE PHILIPPINES, *complainant, vs.* **JUDGE PEDRO DL. GUTIERREZ, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 119, PASAY CITY,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; GROSS INEFFICIENCY; INEXCUSABLE DELAY IN RESOLVING A MOTION CONSTITUTES GROSS INEFFICIENCY.— A Motion for reconsideration of an interlocutory order should be resolved within a reasonable length of time in view of its urgency, and not the 90-day period in the Constitution. Otherwise, the issue in question may become moot and academic. In this particular case, there was an urgent need to resolve the motion in order to remove any doubt on Espiritu's entitlement to a preliminary injunction. In sum, the unexplained delay of respondent judge in resolving the motion is inexcusable, unwarranted and unreasonable. An inexcusable failure to decide a case or motion constitutes gross inefficiency, warranting the imposition of administrative sanctions such as suspension from office without pay or fine on the defaulting judge.

2. ID.; ID.; GROSS IGNORANCE OF THE LAW; RESPONDENT JUDGE SHOWED MANIFEST GROSS IGNORANCE OF THE LAW WHEN HE ISSUED A WRIT OF PRELIMINARY INJUNCTION DESPITE ABSENCE OF BASIS IN FACT AND IN LAW.— [R]espondent judge manifested ignorance as to the propriety or impropriety of issuing a writ of preliminary injunction. The evidence presented in the application for preliminary injunction do not show the presence of the requisites for Espiritu's entitlement to a writ of preliminary mandatory injunction. Indeed, the expired lease contract itself would have easily shown that Espiritu was not entitled to the writ. In fact, the initial attempts by Espiritu to get an injunction against CCP were denied in the Orders dated June 27, 2012 and July 3, 2012, respectively, in the same case. It should be pointed out also that Espiritu filed a motion for reconsideration which the CA rejected anew. Thus, without basis in fact and in law, respondent judge's issuance of the writ of preliminary injunction shows manifest gross ignorance of the law.

3. ID.; ID.; ID.; WHERE RESPONDENT'S ACTUATIONS CANNOT BE CONSIDERED MERE ERROR OF JUDGMENT BUT AN OBSTINATE DISREGARD OF BASIC AND ESTABLISHED RULE OF LAW OR PROCEDURE, IT AMOUNTS TO INEXCUSABLE ABUSE OF AUTHORITY AND GROSS IGNORANCE OF THE LAW.— [E]ven after the pronouncements of the appellate court that respondent judge committed grave abuse of discretion, in an Order dated May 13, 2014, he opted to proceed with the subject case and even further enjoined the parties to make a compromise agreement relative to the removal of the fence placed on the premises of Espiritu. x x x [T]he Court can only conclude that the actuations of respondent Judge were not only gross ignorance of the law of the effect of the appellate court's finding of grave abuse of discretion but defiance as well to the lawful directives/orders of the appellate courts. Though not every judicial error bespeaks ignorance of the law or of the rules, and that, when committed in good faith, does not warrant administrative sanction, the rule applies only in cases within the parameters of tolerable misjudgment. When the law or the rule is so elementary, not to be aware of it or to act as if one does not know it constitutes gross ignorance of the law. One who accepts the exalted position of a judge owes the public and the court proficiency in the law, and the duty to maintain professional competence at all times. When a judge displays an utter lack of familiarity with the rules, he erodes the confidence of the public in the courts. A judge is expected to keep abreast of the developments and amendments thereto, as well as of prevailing jurisprudence. Ignorance of the law by a judge can easily be the mainspring of injustice. In the absence of fraud, dishonesty, or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action. However, the assailed judicial acts must not be in gross violation of clearly established law or procedure, which every judge must be familiar with. Every magistrate presiding over a court of law must have the basic rules at the palm of his hands and maintain professional competence at all times. Thus, respondent judge's actuations cannot be considered as mere error of judgment that can be easily excused. Obstinate disregard of basic and established rule of law or procedure amounts to inexcusable abuse of authority and gross ignorance of the law.

4. ID.; ID.; BIAS AND PARTIALITY; TOTALITY OF CIRCUMSTANCES AND RESPONDENT'S ACTUATIONS IN CASE AT BAR SHOW A CLEAR INDICIUM OF BIAS AND PARTIALITY.— [R]espondent judge inhibited himself from hearing the subject case only on November 25, 2014, *i.e.*, after numerous motions for inhibition filed by CCP, the receipt of the SC Resolution dated June 2, 2014 on June 9, 2014, and after the filing of the administrative complaint against him. In other words, there were several valid and significant grounds for him to inhibit from the case voluntarily yet he refused to do so for unknown reason. His defiance of the court's rulings and his continuous efforts to entertain Espiritu's motions in effect unjustly extended the latter's lease contract which had long expired. The totality of the circumstances and the actuations of the respondent judge attendant to the case, clearly lead to the inescapable conclusion that the respondent judge evidently favoured Espiritu, a clear *indicium* of bias and partiality that calls for a severe administrative sanction.

5. ID.; ID.; HAVING BEEN FOUND GUILTY OF GROSS IGNORANCE OF THE LAW, UNDUE DELAY IN RENDERING AN ORDER, BIAS AND PARTIALITY, THE COURT IMPOSED A FINE OF ₱500,000.00 TO BE DEDUCTED FROM RESPONDENT'S RETIREMENT BENEFITS.— Records show that respondent judge compulsorily retired on December 9, 2016. Nevertheless, his retirement does not exculpate him from his transgressions as presiding judge. It should be noted that the Court *en banc* is unanimous as to the findings of gross ignorance of the law, undue delay in rendering an order, bias and partiality. Nonetheless, five (5) members of the Court voted to impose upon respondent judge the penalty of forfeiture of his retirement benefits and disqualification from re-employment in government service instead of dismissal because he is no longer connected with the Court. However, seven (7) members of the Court believed that the penalty of forfeiture of his retirement benefits and disqualification from re-employment in government service to be too harsh a penalty, considering respondent judge's length of service, and thus, voted to impose a fine of ₱500,000.00 to be deducted from his retirement benefits.

D E C I S I O N

***PER CURIAM*:**

Before us is an Administrative Complaint[1] filed by Dr. Raul M. Sunico (*Dr. Sunico*) against respondent Judge Pedro DL. Gutierrez (*respondent Judge*), Presiding Judge, Regional Trial Court, Branch 119, Pasay City, for gross ignorance of the law, grave abuse of authority, gross neglect of duty, and violation of the New Code of Judicial Conduct, in connection to Civil Case No. R-PSY-12-10726-CV, entitled "*Felix Espiritu v. Raul Sunico, in his capacity as President of the Cultural Center of the Philippines.*"

In his Complaint[2] dated July 10, 2014, Dr. Sunico, in his capacity as the President of the Cultural Center of the Philippines (*CCP*), alleged that the latter entered into a five (5)-year lease contract on a property owned by CCP with Felix Espiritu (*Espiritu*), covering the period of June 16, 2007 until June 15, 2012. Thereafter, Espiritu operated his Yakitori Dori Bar and Grill Restaurant on the leased property.[3]

On April 18, 2012, the CCP management notified Espiritu that it will no longer renew the lease contract after its termination on June 15, 2012. CCP demanded that Espiritu settle his outstanding obligation.[4] Espiritu, however, expressed his interest to renew the lease contract for another five (5) years, but CCP rejected the offer. On June 19, 2012, after the expiration of the contract, CCP sent a notice of disconnection of electricity and water supply to Espiritu.[5]

On June 27, 2012, Espiritu filed a Petition for Specific Performance[6] to fix the lease period, injunction and damages

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[1] *Rollo,* pp. 1-25.

[2] *Id.* at 2-3.

[3] *Id.* at 2.

[4] *Id.*

[5] *Id.* at 3.

[6] *Id.* at 29-48.

before the sala of respondent Judge Gutierrez, who was then on leave.[7] Vice-Executive Judge Wilhelmina J. Wagan denied the application for a 72-hour TRO.[8] On July 3, 2012, pairing Judge Rowena Nieves Tan also denied the application for issuance of a 20-day TRO for lack of merit.[9] Meanwhile, CCP disconnected the electric and water supplies in the subject premises.[10]

On July 24, 2012, Espiritu filed an *Ex Parte* Manifestation with Motion for Reconsideration and *Status Quo Ante* Order[11] which was set for hearing on July 27, 2012. Dr. Sunico claimed that CCP received the copy of the Manifestation/Motion only on August 2, 2012.[12] Dr. Sunico alleged that despite the violation of the three (3)-day notice rule, respondent Judge Gutierrez issued an Order dated July 27, 2012 directing CCP to file its comment/opposition within (5) days from notice.[13] CCP received the Order on August 22, 2012 and had until August 28, 2012 to file its comment (August 27, 2012 was a non-working holiday). Due to time constraints, CCP asked for extension of time, or until September 7, 2012, to file its comment.[14] However, on August 28, 2012, Dr. Sunico lamented that, without waiting for their comment/opposition which was filed within the requested period of extension, respondent judge immediately issued an Order resolving the motion in favor of Espiritu.[15]

CCP moved for reconsideration of the Order dated August 28, 2012 but was denied. Dr. Sunico alleged that respondent

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[7] *Id.* at 3.

[8] *Id.* at 49-50.

[9] *Id.* at 51-54.

[10] *Id.* at 4.

[11] *Id.* at 77-86.

[12] *Id.* at 5.

[13] *Id.* at 352.

[14] *Id.* at 5.

[15] *Id.* at 88-93.

judge was partial and that he also violated CCP's right to procedural due process when he resolved Espiritu's motion without awaiting for CCP's comment/opposition.[16]

After hearing, respondent judge issued an Order dated September 25, 2012 granting Espiritu's motion for the issuance of preliminary injunction.[17] A writ of preliminary injunction was issued on September 28, 2012 after posting of bond.[18] On October 10, 2012, Dr. Sunico filed a Motion for Reconsideration of the Order and for the Dissolution of the Writ of Preliminary Injunction.[19] To expedite the proceedings, CCP filed a Manifestation with Extremely Urgent Motion for Early Resolution of its Motion for Reconsideration[20] dated December 13, 2012. Dr. Sunico claimed that respondent judge failed to act on the motion despite the lapse of more than three (3) months from the time of the filing to resolve.[21] On March 6, 2013, CCP filed another Reiterative Motion for Speedy Resolution of the Motion for Reconsideration.[22]

Finally, after more than 5 months, respondent judge denied Dr. Sunico's motion for reconsideration in an Order dated April 1, 2013. Dr. Sunico resented that the said order is a mere one-page document with three (3) short paragraphs which failed to explain how respondent judge arrived at said order. Dr. Sunico, likewise, claimed that the "apathetic" and "nail-pace" actions of respondent judge to CCP's motion fostered suspicion on his impartiality.[23]

On May 17, 2013, Dr. Sunico sought respondent judge's inhibition. During the hearing, respondent judge stated that

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[16] *Id.* at 6.

[17] *Id.* at 116-122.

[18] *Id.* at 123-124.

[19] *Id.* at 127-150.

[20] *Id.* at 153-155.

[21] *Id.* at 7-8.

[22] *Id.* at 8.

[23] *Id.*

Dr. Sunico's motion was improper, since *certiorari* was the better remedy. He also asked Dr. Sunico if it was possible to give Espiritu an extension of the lease contract. Meanwhile, on June 27, 2013, Dr. Sunico filed a Petition for *Certiorari* of the Orders dated September 25, 2012 and April 1, 2013 before the Court of Appeals (*CA*), docketed as CA-G.R. SP No. 130529.[24]

After four (4) months from the filing of the motion for inhibition, respondent judge issued an Order[25] dated September 26, 2013 stating that he shall inhibit from the case provided that the petition for *certiorari* before the CA is granted and that he is found to have gravely abused his discretion in issuing the writ of preliminary mandatory injunction.

In a Decision[26] dated November 11, 2013, the CA found respondent judge Gutierrez gravely abused his discretion in issuing the Orders dated September 25, 2012 and April 1, 2013. The appellate court stated that Espiritu was not entitled to a writ of preliminary injunction since there was no showing that he had a clear and unmistakable right that must be protected.

Consequently, Dr. Sunico reiterated its motion for respondent judge's inhibition. In an Order[27] dated January 15, 2014, respondent judge deferred his inhibition until the resolution of the Motion for Reconsideration filed by Espiritu before the CA. The CA denied the motion for reconsideration in a Resolution dated March 10, 2014 for lack of merit. However, notwithstanding the denial by the CA of Espiritu's motion for reconsideration, respondent judge refused to recuse himself from the case.[28]

On April 29, 2014, Espiritu filed a Petition for Review on *Certiorari* before the Supreme Court (*SC*). Meanwhile, CCP

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[24] *Id.*

[25] *Id.* at 161.

[26] *Id.* at 163-180. Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Rosmari C. Carandang and Melchor Q. C. Sadang, concurring.

[27] *Rollo*, p. 203.

[28] *Id.* at 10.

fenced certain areas of the subject property within its perimeter but excluded the subject leased premises. Espiritu misinterpreted CCP's action as violative of the *status quo ante* issued by respondent judge on August 28, 2012. Hence, Espiritu filed an *Ex Parte* Manifestation with Motion for Issuance of Show Cause Order against CCP.[29]

On May 9, 2014, Espiritu filed a Supplemental Motion for Removal of Fence, which was set for hearing on May 13, 2014. Dr. Sunico filed a reiterative *Ex-Parte* Motion for Immediate Inhibition of respondent judge. During the hearing, the Motion for Issuance of Show Cause Order and the Supplemental Motion filed by Espiritu were simultaneously heard. Complainant Dr. Sunico assailed the actions of respondent judge in entertaining Espiritu's motions. Furthermore, respondent judge urged the parties to forge a compromise to remove the fence.[30]

On June 2, 2014, Dr. Sunico filed a Consolidated Opposition to the Motions of Espiritu with Fourth Reiteration of its motion for respondent judge's inhibition.[31]

In an Order dated June 4, 2014, respondent judge Gutierrez ruled as follows:

WHEREFORE, premises considered, the Court hereby rules as follows:

> a. Petitioner's motion for issuance of show cause Order is granted and hence gives respondent Raul Sunico to explain in writing within fifteen (15) days from receipt hereof why he should not be cited for contempt;
>
> b. Petitioner's motion for removal of fence is also granted and respondent through its officers are ordered to remove all the fences around the leased premises of petitioner within twenty-four (24) hours from receipt hereof under pain of contempt of court for failure to comply with the same or referral to the Ombudsman upon complaint of petitioner; and

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[29] *Id.* at 10-11.

[30] *Id.* at 12.

[31] *Id.*

c. The motion to inhibit filed by respondent is denied for lack of merit.[32]

On June 5, 2014, CCP filed a Motion for Reconsideration with Fifth Reiterative Motion for Inhibition.[33] Complainant Dr. Sunico insisted that respondent judge has been partial from the very start. He ordered the removal of the fence which was outside the subject leased premises and even inspected the property without CCP's knowledge or presence, and continued to hear the case apparently to accommodate and protect Espiritu.

On August 14, 2014, the Office of the Court Administrator (*OCA*) resolved to require respondent judge to file his comment relative to the complaint filed against him.[34]

On November 25, 2014, acting on the fifth reiterative prayer for his inhibition and motion for reconsideration, respondent judge resolved to grant the motion for inhibition.[35]

In his Comment[36] dated November 26, 2014, respondent judge categorically denied the allegations against him. He asserted that the assailed writ and orders were issued in the exercise of his judicial function, based on his appreciation of the facts, and within the bounds of the law and established jurisprudence. He opined that he cannot be subjected to civil, criminal or administrative liability for any official acts he did no matter how erroneous they are as long as he acted in good faith.[37]

Respondent judge explained that considering the urgency of the matter, *i.e.,* disconnection of the utilities that hamper the operation of Espiritu's business on the leased premises, he was then duty-bound to immediately rule on the matter which

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[32] *Id.* at 282-283.

[33] *Id.* at 284-293.

[34] *Id.* at 331.

[35] *Id.* at 361-362.

[36] *Id.* at 335-350.

[37] *Id.* at 341.

was why he granted the injunction. He opted not to discuss the assailed orders considering that these are the subject of *certiorari* proceedings before the CA and the SC.[38]

Respondent judge further averred that complainant filed the instant administrative complaint to coerce him to inhibit from further trying the case, which he had already granted.[39]

Meanwhile, in separate cases, A.M. No. RTJ-04-1858, respondent judge was found guilty of simple misconduct and he was fined Php20,000.00. In another administrative case, A.M. No. RTJ-08-2157, respondent judge was reprimanded for poor ethical judgment and for failure to uphold the dignity of the court.[40]

In a Memorandum[41] dated January 20, 2016, the OCA found respondent judge guilty of gross ignorance of the law, undue delay and manifest bias and partiality and recommended that he be fined in the amount of ₱40,000.00 and be sternly warned. It likewise recommended that the complaint be redocketed as a regular administrative complaint against respondent judge.

Meanwhile, on December 9, 2016, respondent judge Gutierrez compulsorily retired.

RULING

We concur with the findings of the OCA, except as to the imposable penalty.

On the charge of undue delay in rendering a decision or order:

In the instant case, records show that on October 12, 2012, CCP filed a motion for reconsideration and for the dissolution of the writ of preliminary injunction.[42] On the same date,

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[38] *Id.* at 347-348.

[39] *Id.* at 348-349.

[40] *Id.* at 369.

[41] *Id.* at 366-374.

[42] *Id.* at 127-151.

respondent judge gave Espiritu the opportunity to file comment/opposition, and CCP to file a reply from receipt of Espiritu's comment/opposition, which upon submission was deemed submitted for resolution.[43] On December 13, 2012, Espiritu filed his Comment, while on November 26, 2013, CCP filed its Manifestation with Extremely Urgent Motion for Resolution. In the same manifestation, CCP informed the trial court that it would no longer file a reply, and moved for the early resolution of its motion for reconsideration.[44] Notwithstanding that the matter had already been submitted for resolution upon submission of CCP's manifestation/motion, respondent judge continued with the proceedings by setting the case for preliminary and pre-trial conference on April 4, 2013. On March 6, 2013, CCP filed anew a reiterative urgent motion for speedy resolution. Respondent judge Gutierrez resolved the motion only on April 1, 2013.[45] Respondent judge did not provide any reason for his delay in resolving the said motion.

A Motion for reconsideration of an interlocutory order should be resolved within a reasonable length of time in view of its urgency, and not the 90-day period in the Constitution.[46] Otherwise, the issue in question may become moot and academic. In this particular case, there was an urgent need to resolve the motion in order to remove any doubt on Espiritu's entitlement to a preliminary injunction. In sum, the unexplained delay of respondent judge in resolving the motion is inexcusable, unwarranted and unreasonable. An inexcusable failure to decide a case or motion constitutes gross inefficiency, warranting the imposition of administrative sanctions such as suspension from office without pay or fine on the defaulting judge.[47]

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[43] *Id.* at 152.

[44] *Id.* at 153-155.

[45] *Id.* at 338.

[46] Section 15(1), Article VIII of the Constitution.

[47] *Spouses Marcelo v. Judge Pichay,* 729 Phil. 113, 122 (2014).

On the charge of gross ignorance of the law:

Respondent judge contend that Dr. Sunico should have resorted to judicial remedies first. He added that he cannot be held liable for gross ignorance of the law for issuing the writ of preliminary mandatory injunction in favor of Espiritu since it was done in the exercise of his judicial functions.

We are unconvinced.

It must likewise be emphasized that Dr. Sunico indeed elevated the assailed orders of respondent judge before the CA in CA-G.R. SP No. 130529. In fact, the appellate court already ruled that respondent judge committed grave abuse of discretion amounting to lack or in excess of jurisdiction in issuing the subject injunctive writ against CCP for having no basis in fact or in law. The pertinent discussion in the decision of the CA is noteworthy, to wit:

> In the present case, we find that private respondent Espiritu is not entitled to a writ of preliminary mandatory injunction since there is no showing that he has a clear and unmistakable right that must be protected.
>
> It is a deeply ingrained doctrine in Philippine remedial law that a preliminary injunctive writ under Rule 58 issues only upon a showing of the applicant's "clear legal right" being violated or under threat of violation by the defendant. "Clear legal right," within the meaning of Rule 58, contemplates a right "clearly founded in or granted by law." Any hint of doubt or dispute on the asserted legal right precludes the grant of preliminary relief... These procedural barriers to the issuance of a preliminary injunctive writ are rooted on the equitable nature of such relief, preserving the *status quo* while, at the same time, restricting the course of action of the defendants even before adverse judgment is rendered against them.
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> x x x x x x x x x
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> ***The initial evidence presented by private respondent Espiritu before the public respondent in the preliminary injunction incident do not show the presence of the requisites for his entitlement to a writ of preliminary mandatory injunction. Ergo, public respondent committed grave abuse of discretion amounting to lack or in excess***

of jurisdiction in issuing a writ of preliminary mandatory injunction against petitioner CCP which has no basis in fact or in law. The only evidence needed by (public respondent) to justify the issuance of the writ, if indeed there was a need to issue one, was the lease contract itself which. ***Though evidentiary in nature, would have shown, at first glance, that (private respondent Espiritu) was not entitled to the writ, even without a full-blown trial. The situation before the Court is … a consequence of the parties' stipulation of a determinate period for (the lease contract's) expiration. The possibility of irreparable damage without proof of actual existing right is not a ground for injunction.*** Where the complainant's right is doubtful or disputed, injunction is not proper. Absent a clear legal right, the issuance of the injunctive relief constitutes grave abuse of discretion. A finding that the applicant for preliminary mandatory injunction may suffer damage not capable of pecuniary estimation does not suffice to support an injunction, where it appears that the right of the applicant is unclear or dispute. (Emphasis ours)

Based on the foregoing, respondent judge manifested ignorance as to the propriety or impropriety of issuing a writ of preliminary injunction. The evidence presented in the application for preliminary injunction do not show the presence of the requisites for Espiritu's entitlement to a writ of preliminary mandatory injunction. Indeed, the expired lease contract itself would have easily shown that Espiritu was not entitled to the writ. In fact, the initial attempts by Espiritu to get an injunction against CCP were denied in the Orders dated June 27, 2012 and July 3, 2012, respectively, in the same case.[48] It should be pointed out also that Espiritu filed a motion for reconsideration which the CA rejected anew. Thus, without basis in fact and in law, respondent judge's issuance of the writ of preliminary injunction shows manifest gross ignorance of the law.

Another point of concern is respondent judge's nonchalant attitude as to the implication of the appellate court's finding of grave abuse of discretion. The term "grave abuse of discretion"

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[48] Penned by Judge Wilhelmina G. Jorge-Wagan and Judge Rowena Nieves A. Tan, respectively, in *Felix Espiritu, doing business under the name and style Yakitori Dori Bar And Grill Restaurant v. Raul Sunico.*

has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for *certiorari* is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of *certiorari* under Rule 65 will strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross,[49] as what happened in this case.

Respondent judge cannot feign ignorance as to the effect of the grant of the petition for *certiorari* since the dispositive portion of appellate court's decision leaves no room for any interpretation, to wit:

> Wherefore, premises considered, the Petition is GRANTED. The Orders dated 25 September 2012 and 01 April 2013 of the Regional Trial Court, National Capital Judicial Region, Branch 119, Pasay City, in Civil Case No. R-PSY-12-10726-CV are NULLIFIED. Accordingly, the writ of preliminary mandatory injunction issued in favor of private respondent Felix Espiritu doing business under the name and style "Yakitori Dori Bar and Grill Restaurant" is LIFTED and any bond posted by the latter is CANCELLED. Costs against private respondent.
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> SO ORDERED.

However, even after the pronouncements of the appellate court that respondent judge committed grave abuse of discretion,

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[49] *Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission, Stayfast Philippines, Inc./ Maria Almeida,* 716 Phil. 500, 516 (2013).

[50] *Rollo,* p. 246.

in an Order[50] dated May 13, 2014, he opted to proceed with the subject case and even further enjoined the parties to make a compromise agreement relative to the removal of the fence placed on the premises of Espiritu. Worse, in an Order[51] dated June 4, 2014, respondent judge again granted Espiritu's motion for the removal of fence which CCP constructed outside of the leased premises, and denied anew Dr. Sunico's motion to inhibit. Clearly, judging by the foregoing, the Court can only conclude that the actuations of respondent Judge were not only gross ignorance of the law of the effect of the appellate court's finding of grave abuse of discretion but defiance as well to the lawful directives/orders of the appellate courts.

Though not every judicial error bespeaks ignorance of the law or of the rules, and that, when committed in good faith, does not warrant administrative sanction, the rule applies only in cases within the parameters of tolerable misjudgment. When the law or the rule is so elementary, not to be aware of it or to act as if one does not know it constitutes gross ignorance of the law. One who accepts the exalted position of a judge owes the public and the court proficiency in the law, and the duty to maintain professional competence at all times. When a judge displays an utter lack of familiarity with the rules, he erodes the confidence of the public in the courts. A judge is expected to keep abreast of the developments and amendments thereto, as well as of prevailing jurisprudence. Ignorance of the law by a judge can easily be the mainspring of injustice.[52]

In the absence of fraud, dishonesty, or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action. However, the assailed judicial acts must not be in gross violation of clearly established law or procedure, which every judge must be familiar with. Every magistrate presiding over a court of law must have the basic rules at the palm of his

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[51] *Id.* at 280-283.

[52] *Spouses Lago v. Judge Abul, Jr.,* 654 Phil. 479, 491 (2011).

[53] *Id.*

hands and maintain professional competence at all times.[53]

Thus, respondent judge's actuations cannot be considered as mere error of judgment that can be easily excused. Obstinate disregard of basic and established rule of law or procedure amounts to inexcusable abuse of authority and gross ignorance of the law.

On bias and partiality:

Given the foregoing discussions, We find equally disturbing is respondent judge's stubbornness to cling to the subject case for unknown reason. Indeed, the decision of the appellate court implies that it should not have been difficult for respondent judge to determine whether Espiritu was entitled to an injunctive writ. Respondent judge should have been guided by this ruling and should have refrained in further issuing orders which tend to favor Espiritu without factual or legal basis. However, instead of rectifying his errors or inhibiting from the case at once, respondent judge appeared to be unperturbed and insisted in hearing the case.

The rule on inhibition and disqualification of judges is laid down in Section 1, Rule 137 of the Rules of Court:

> Section 1. *Disqualification of judge*. – No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.
>
> A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

The Rules contemplate two kinds of inhibition: compulsory and voluntary. Under the first paragraph of the cited Rule, it

is conclusively presumed that judges cannot actively and impartially sit in the instances mentioned. The second paragraph, which embodies voluntary inhibition, leaves to the sound discretion of the judges concerned whether to sit in a case for other just and valid reasons, with only their conscience as guide. Here, the case of respondent judge would fall under the concept of voluntary inhibition.

Indeed, mere imputation of bias or partiality is not enough ground for judges to inhibit, especially when the charge is without basis.[54] However, when Dr. Sunico questioned the issuance of the subject injunctive writ before the CA, he also moved for the inhibition of the respondent judge. Acting on the motion, respondent judge promised in his Order dated September 26, 2013, that he would inhibit from the case should the CA grant the petition for *certiorari* filed by the CCP and with findings that there was grave abuse of discretion in the issuance of the TRO and the writ of preliminary mandatory injunction. However, even with subsequent appellate court's finding of grave abuse of discretion, respondent judge still refused to inhibit. Respondent judge further issued an Order[55] dated January 15, 2014 deferring his inhibition until the resolution of the motion for reconsideration filed by Espiritu before the CA. Again, notwithstanding the appellate court's denial of Espiritu's motion for reconsideration, respondent judge refused to recuse himself from the case.

Noteworthy to mention also is that when the subject case was elevated to the SC, We issued a Resolution dated June 2, 2014 in G.R. No. 211616,[56] which denied Espiritu's petition and held that the appellate court properly nullified the subject order for having issued with grave abuse of discretion. It is appalling that given respondent judge's admission that he received the said Resolution of the SC on June 9, 2014, he still

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[54] *BGen. (Ret.) Ramiscal v. Hon. Justices Hernandez, et al.,* 645 Phil. 550, 558 (2010).

[55] *Rollo,* p. 203.

[56] *Felix Espiritu v. Cultural Center of the Philippines.*

failed to undo his erroneous actions which undoubtedly put petitioner in a disadvantageous position.

It was likewise shown that respondent judge inhibited himself from hearing the subject case only on November 25, 2014, *i.e.*, after numerous motions for inhibition filed by CCP, the receipt of the SC Resolution dated June 2, 2014 on June 9, 2014, and after the filing of the administrative complaint against him. In other words, there were several valid and significant grounds for him to inhibit from the case voluntarily yet he refused to do so for unknown reason. His defiance of the court's rulings and his continuous efforts to entertain Espiritu's motions in effect unjustly extended the latter's lease contract which had long expired. The totality of the circumstances and the actuations of the respondent judge attendant to the case, clearly lead to the inescapable conclusion that the respondent judge evidently favoured Espiritu, a clear *indicium* of bias and partiality that calls for a severe administrative sanction.

Records show that respondent judge compulsorily retired on December 9, 2016. Nevertheless, his retirement does not exculpate him from his transgressions as presiding judge. It should be noted that the Court *en banc* is unanimous as to the findings of gross ignorance of the law, undue delay in rendering an order, bias and partiality. Nonetheless, five (5) members of the Court voted to impose upon respondent judge the penalty of forfeiture of his retirement benefits and disqualification from re-employment in government service instead of dismissal because he is no longer connected with the Court. However, seven (7) members of the Court believed that the penalty of forfeiture of his retirement benefits and disqualification from re-employment in government service to be too harsh a penalty, considering respondent judge's length of service, and thus, voted to impose a fine of ₱500,000.00 to be deducted from his retirement benefits.

WHEREFORE, premises considered, Judge Pedro DL. Gutierrez, Presiding Judge of the Regional Trial Court, Branch 119, Regional Trial Court, Pasay City, is found **GUILTY** of Gross Ignorance of the Law, Undue Delay in Rendering an Order, Bias and Partiality, and is hereby **ORDERED** to **PAY** a **FINE** of ₱500,000.00 to be deducted from his retirement benefits.

This Decision is immediately **EXECUTORY.**

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Mendoza, Perlas-Bernabe, Jardeleza, and *Caguioa, JJ.,* concur.

Leonen, J., concurs. For total forfeiture.

Reyes, J., on wellness leave.

EN BANC

[A.M. No. RTJ-17-2488. February 21, 2017]
(Formerly OCA IPI No. 08-3046-RTJ)

MAY N. LASPIÑAS, ROENA V. DIONEO, MAE VERCILLE H. NALLOS, CHERYL D. LOPEZ, ANTHONY B. CARISMA, RALPH P. BALILI, JAIME D. WAYONG, VICENTE V. QUINICOT, ENRICO B. ESPINOSA, JR., ELIZALDE T. JUEVES, JEANETTE A. ARINDAY, MA. TERESA S. VILLANOS, LARRY C. HECHANOVA, AILEEN H. GAMBOA, JORGE P. DEQUILLA, *complainants, vs.* **JUDGE FELIPE G. BANZON, REGIONAL TRIAL COURT, BR. 69, SILAY CITY, NEGROS OCCIDENTAL**, *respondent.*

[A.M. No. P-14-3216. February 21, 2017]
(Formerly OCA IPI No. 10-3376-P)

JUDGE FELIPE G. BANZON, *complainant, vs.* **MAY N. LASPIÑAS, LEGAL RESEARCHER/OFFICER-IN-CHARGE, REGIONAL TRIAL COURT, BR. 40, SILAY CITY, NEGROS OCCIDENTAL**, *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; MISCONDUCT; DEFINED AND EXPLAINED; ELEMENTS OF MISCONDUCT TO BE CONSIDERED GRAVE.— Misconduct has been defined as any unlawful conduct, on the part of the person concerned with the administration of justice, prejudicial to the rights of the parties or to the right determination of the cause. It implies wrongful, improper, or unlawful conduct, not a mere error of judgment, motivated by a premeditated, obstinate or intentional purpose, although it does not necessarily imply corruption or criminal intent, and must have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. Under our rules, misconduct maybe gross or simple. In order to differentiate the two, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must necessarily be manifest in the former. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his position or office to procure some benefit for himself or for another person, contrary to duty and the rights of others.

2. ID.; ID.; ID.; SOLICITING AND RECEIVING MONEY FROM LITIGANTS ON THE PROMISE OF FAVORABLE ACTION AND WITHDRAWING PUBLICATION FEES FOR PERSONAL USE ARE CLEAR INDICATION OF CORRUPTION AND ABUSE OF POSITION, WHICH AMOUNT TO GRAVE MISCONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; PENALTY OF DISMISSAL, PROPER.— The Court is not unaware that in certain cases, it exercised its discretion to assess mitigating circumstances such as Laspiñas' twenty (20) years, or more, of service. The Court, however, cannot apply this exception to the present case for, as already pointed herein, the findings – that Laspiñas had been soliciting and/or receiving money from litigants on the promise of favorable action on their cases and had been using and/or misusing the publication fees for personal use — show her proclivity for corruption and abuse of position. As a public servant, Laspiñas

is expected at all times to exhibit the highest sense of honesty, integrity, and responsibility that the Constitution, under Article XI, Section 1 mandates. Moreover, as a court employee, she ought to have been well aware of the high standards of propriety and decorum expected of employees in the judiciary as "any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it." Without doubt, she has shown her unfitness for public office. In this light, the OCA correctly held Laspiñas administratively liable for gross misconduct and conduct prejudicial to the best interest of the service. Pursuant to Section 50 of the RRACCS, the Court finds the penalty of dismissal proper.

APPEARANCES OF COUNSEL

Gica Del Socorro Espinoza Villarmia Fernandez & Tan for complainants.

Hilado Hagad & Hilado for respondent.

R E S O L U T I O N

***PER CURIAM*:**

For the Court's resolution is the administrative complaint docketed as A.M. No. P-14-3216 (formerly OCA IPI No. 10-3376-P), filed by Judge Felipe G. Banzon (Judge Banzon) of the Regional Trial Court (RTC) of Silay City, Negros Occidental, Branch 69 (RTC, Br. 69) against May N. Laspiñas[1] (Laspiñas), Legal Researcher/Officer-in-Charge of the RTC of Silay City, Negros Occidental, Branch 40 (RTC, Br. 40), for Grave Misconduct. A.M. No. P-14-3216 was earlier consolidated with A.M. No. RTJ-17-2488 (formerly OCA IPI No. 08-3046-RTJ), initiated by Laspiñas against Judge Banzon which the Court dismissed with finality in a Resolution dated December 3, 2014.[2]

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[1] "Las Piñas" in some parts of the records.

[2] *Rollo* (A.M. No. RTJ-17-2488), pp. 842-843.

The Facts

A.M. No. P-14-3216

In the letter-complaint[3] dated November 21, 2008, Judge Banzon narrated that when he received complaints of misconduct and corruption at the Office of the Clerk of Court (OCC), most of which referred to Laspiñas as compromising the court's integrity and image for monetary gains, he imposed new regulations to be observed at the OCC that included requiring the latter to vacate the area she occupied at the OCC and to transfer to the premises of the RTC, Br. 40; Laspiñas openly defied this directive and ridiculed the Office of the Executive Judge.[4]

Further, he stated that at about 11:00 a.m. of November 4, 2008, while he was at the OCC, Laspiñas confronted him in an extremely abusive and hostile manner, menacingly pointing her forefinger at him, and hurling curses and invectives. He invited her to his *sala* to privately discuss the matter and to save the court from further embarrassment, which invitation she arrogantly refused; that even Judge Reynaldo M. Alon (Judge Alon) of RTC, Branch 40 tried to restrain her to no avail. He added that Laspiñas repeated the public ridicule in the afternoon of the same day as he was walking past Br. 40. Finally, he claimed that Laspiñas had gained notoriety in the judicial district as the person who could broker and fix problems in the court for a fee.[5]

For her part, Laspiñas[6] denied the allegations and asserted that she did not appropriate a space in the OCC, affording her primary

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[3] *Rollo* (A.M. No. P-14-3216), pp. 1-5. He attached the affidavits of the following persons who witnessed the November 4, 2008 incident in support of his complaint: Eric Gariando; Felix T. Nanta, Stenographer, RTC, Br. 69; Ma. Lisa Lorraine Atotubo, City Prosecutor, Silay City, Negros Occidental; Ricardo Veraguas, Prison Guard II, provincial Jail of Negros Occidental at Bacolod City; Ricky C. Ibañez, Clerk, RTC, Br. 69; Vic A. Malubay, Clerk, RTC, Br. 69 (*rollo*, pp. 6-19).

[4] *Id*. at 2-3.

[5] *Id.* at 3-4.

[6] *Rollo* (A.M. No. P-14-3216), pp. 62-71. She submitted the affidavits of the following court employees to support her allegations: Jeanette A. Arinday, Cheryl

and easy access to those who do business with the courts, but rather, she had been occupying this space since her appointment as Legal Researcher in 1988. She belied the reports of misconduct and corruption at the OCC and claimed that: Judge Banzon filed the administrative complaint as leverage for the administrative case they filed against him on October 10, 2008; and if the reports were true, he should have called her attention and directed her to explain or otherwise reported the matter to Judge Alon, her superior. She asserted that during the November 4, 2008 confrontation, it was Judge Banzon who angrily called her and hurled invectives, and that she did not publicly defy and ridicule Judge Banzon and the office he holds. Finally, she denied meeting Judge Banzon in the afternoon of said date.[7]

A.M. No. RTJ-17-2488

In the verified complaint[8] dated November 10, 2008, Laspiñas, together with other court employees of RTC, Silay City, Negros Occidental, charged Judge Banzon with violation of the Code of Judicial Conduct and Acts Unbecoming of a Member of the Judiciary, alleging that whenever he called for a meeting, Judge Banzon would always threaten them with dismissal or transfer should they defy him. They narrated, among others: that during a meeting, Judge Banzon threw a paper weight in front of Roena V. Dioneo (Dioneo), Clerk IV, OCC, RTC, and Mae Vercille H. Nallos (Nallos), Clerk III, RTC, Br. 40; that he told them he would make their lives a living hell as soon as Judge Alon retires on February 4, 2009; that on separate occasions, he challenged Elizalde T. Jueves (Jueves), Process Server, RTC, Br. 69, and Ralph P. Balili (Balili),

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D. Lopez, Larry C. Hechanova, Roena V. Dioneo, Daisy F. Labanza, Eric B. De Vera, Ralph P. Balili, Jaime D. Wayong, Enrico P. Espinosa, Jr., Elizalde T. Jueves, Jorge P. Dequilla, and Mae Vercille H. Nallos (*rollo*, pp. 81-107).

[7] *Rollo* (A.M. No. P-14-3216), pp. 63-68.

[8] *Rollo* (A.M. No. RTJ-17-2488), pp. 1-10. The complaint was signed by the following: Roena V. Dioneo, Mae Vercille H. Nallos, Cheryl D. Lopez, Anthony B. Carisma, Ralph P. Balili, Jaime D. Wayong, Vicente V. Quinicot, Enrico B. Espinosa, Jr., Elizalde T. Jueves, Jeanette A. Arinday, Ma. Teresa S. Villanos, Larry C. Hechanova, Aileen H. Gamboa, Jorge P. Dequilla, and May N. Laspiñas.

Sheriff IV, OCC, to a fight; and that when Anthony B. Carisma, Process Server, RTC, Br. 40, tried to apologize for failing to immediately report to him, Judge Banzon shouted *"Don't come near, otherwise I will kick you."*[9]

In his comment[10] dated June 4, 2010, Judge Banzon claimed that as Presiding Judge of RTC, Br. 69, and later Executive Judge, he conducted regular and periodic staff meetings to review the accomplishments of the branch and of the OCC; and while at times arguments ensued, none went beyond civility and righteous conduct and decorum. He denied challenging Balili and Jueves to a fight; and admitted having: summoned to his chambers Dioneo, Nallos, and Jeanette Arinday, not to humiliate, but to admonish and reprimand them for facilitating the approval of an accused's surety bond and his eventual release, knowing full well that the accused had an impending arrest warrant for murder before his *sala,* and admonished Jueves during their periodic meetings for his ineptness in timely serving subpoenas. Lastly, he claimed that he received reports of cases being fixed for a fee, solicitations from litigants and lawyers, and unauthorized use and/or misuse of court funds kept in a fiduciary capacity by a group of personnel headed by, among others, Laspiñas.[11]

On December 8, 2010, the Court referred A.M. OCA IPI No. 08-3046-RTJ to the Court of Appeals (CA), Cebu Station, for investigation, report, and recommendation.[12] The case was eventually raffled to Associate Justice Myra V. Garcia-Fernandez (Justice Garcia-Fernandez) who, in her Investigation Report[13] dated

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[9] *Rollo* (A.M. No. RTJ-17-2488), pp. 1-7.

[10] *Id*. at 52-56. See Manifestation dated January 17, 2011 of Judge Banzon (*rollo*, pp. 141-142) adopting the Manifesto and Affidavits of lawyers and court employees, with the December 8, 2010 letter of Atty. Ivan G. Nemenzo, President, Integrated Bar of the Philippines, Negros Occidental Chapter (*rollo*, pp. 87-140).

[11] *Id.* at 52-56.

[12] *Id.* at 85-86. The case was initially raffled to Associate Justice Ramon Paul L. Hernando, who voluntarily inhibited himself from the case.

[13] *Id.* at 707-733.

March 8, 2012, recommended: (1) that the complaint against Judge Banzon be dismissed; and (2) that Judge Banzon's complaint against Laspiñas, *et al*. for gross misconduct and insubordination, which are contained in the affidavits of the witnesses for Judge Banzon and in the Manifesto of Support filed by the Integrated Bar of the Philippines-Negros Occidental Chapter, be docketed as a separate administrative matter and investigated accordingly.

Meanwhile, in a Resolution[14] dated March 11, 2013, the Court resolved to consolidate A.M. OCA IPI No. 10-3376-P with A.M. OCA IPI No. 08-3046-RTJ.

In a Memorandum[15] dated January 6, 2014, the Office of the Court Administrator (OCA) agreed with Justice Garcia-Fernandez's observations and recommendations in A.M. OCA IPI No. 08-3046-RTJ, but recommended that Judge Banzon be held administratively liable for conduct unbecoming a judge, and be reprimanded and advised to be more circumspect in his dealings with the court employees.[16]

The Court, in a Resolution[17] dated June 16, 2014, adopted the OCA's recommendations, dismissed the complaint against Judge Banzon, and: (*1*) recommended that OCA IPI No. 10-3376-P be re-docketed as a regular administrative matter; and (*2*) directed the Executive Judge of RTC, Silay City, Negros Occidental to conduct an investigation regarding the alleged illegal activities of Laspiñas and other court personnel.

On October 1, 2014, Laspiñas moved for reconsideration[18] – of the Court's dismissal of the complaint against Judge Banzon (A.M.

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[14] *Rollo* (A.M. No. P-14-3216), p. 316; on Judge Banzon's Motion for Reconsideration dated November 22, 2011 (*rollo*, pp. 261-262) and the OCA 's Memorandum dated December 17, 2012 (*rollo*, pp. 310-315). See also *rollo* (A.M. No. RTJ-17-2488), p. 771.

[15] *Id*. at pp. 333-347. See *rollo* (A.M. No. RTJ-17-2488), pp. 780-794 (pages misplaced in the *rollo*). Signed by Deputy Court Administrator Raul Bautista Villanueva and Court Administrator Jose Midas P. Marquez.

[16] *Rollo* (A.M. No. RTJ-17-2488), p. 793.

[17] *Rollo* (A.M. No. P-14-3216), pp. 348-349; (A.M. No. RTJ-17-2488), p. 798.

[18] *Rollo* (A.M. No. RTJ-17-2488), pp. 799-811.

OCA IPI No. 08-3046-RTJ) – which the Court denied with finality in the Resolution dated December 3, 2014.[19]

Subsequently, pursuant to the Court's directive, Judge Dyna Doll Chiongson-Trocio (Judge Chiongson-Trocio), Executive Judge of RTC, Silay City, submitted her Investigation Report[20] dated January 13, 2016. Judge Chiongson-Trocio made the following observations and findings in her Investigation Report:

1. There were unauthorized withdrawals of the publication fees deposited with the OCC, Silay City, as stated by Judge Karen Joy Tan-Gaston,[21] MTCC, Br. 6, Bacolod City (Branch Clerk of Court, RTC, Br. 40 from 2010 to 2012) and as shown by the logbook bearing the initials of Nallos and Laspiñas as the persons who withdrew the amounts.[22]

2. Some cases from the RTC, Br. 40 were "sold" to parties, *i.e.,* a Cadastral case where Court Stenographer Fe Dejaros witnessed Laspiñas and Dioneo receiving ₱10,000.00 from the daughter of the property owner to facilitate the petition.[23]

3. The statement of Atty. De Vera and Mae A. Espinosa in their June 26, 1996 Joint Affidavit (of Cohabitation), *i.e.*, that they lived together as husband and wife for five (5) years with no legal impediment to marry, even while Atty. De Vera's marriage was nullified only on April 18, 1995.[24]

4. There was no concrete evidence linking Laspiñas or other court personnel to the irregularities in Civil Case No. 2243-40, a case for declaration of nullity of marriage. Per the statement of Fe A. Dejaros, Court Stenographer, RTC,

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[19] *Id*. at 842-843.

[20] *Rollo* (A.M. No. P-14-3216), pp. 352-368.

[21] *Id*. at 355-357.

[22] See *rollo* (A.M. No. P-14-3216), p. 364.

[23] *Id*. at 358 and 364-365.

[24] *Id*. at 363 and 366.

Br. 40, it was Elizalde Jueves, Process Server, RTC, Br., who informed the mother of the petitioner (in the nullity case) that Laspiñas and Nallos would assist them.[25]

5. The monetary solicitation made by Atty. De Vera, Teddy Quinicot, and Ralph Balili (Balili) from Mars Finance for expenses in connection with an administrative hearing was recorded in the police blotter of Villamonte, Bacolod City Police Station.[26]

6. Laspiñas, together with Nallos, prepared petitions in special proceedings cases for a fee – as relayed particularly by Provincial Prosecutor Christy Enofre-Uriarte (Branch Clerk of Court, RTC, Br. 40 from April 2, 2002-March 30, 2008), Judge Gaston, and Judy Y. Empio, Social Worker II.[27]

7. The other allegations including those contained in the list prepared by Judge Banzon, *i.e.*, that Jorge Dequilla, Utility Aide, RTC, Br. 40, Anthony Carisma, Process Server, RTC, Br. 40, Enrico Espinosa, Court Aide, RTC, Br. 69, Elizalde Jueves, Balili, and Atty. De Vera, were seen several times in drug dens; and that Jorge Dequilla was seen at the casino during office hours, lacked sufficient evidentiary support from which she could form any conclusion.[28]

The Action and Recommendation of the OCA (A.M. No. P-14-3216)

In the Memorandum[29] dated August 5, 2016, the OCA recommended that: (1) Laspiñas be found guilty of Grave Misconduct and conduct prejudicial to the best interest of the service, and be dismissed from the service effective immediately,

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[25] *Id*. at 358-359.

[26] *Id*. at 362 and 367.

[27] *Id.* at 353-355, 362, and 367.

[28] *Id.* at 363 and 367.

[29] *Id.* at 480-497. Signed by Deputy Court Administrator Raul Bautista Villanueva and Court Administrator Jose Midas P. Marquez.

with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch or agency of the government, including government-owned or controlled corporations, without prejudice to her criminal liabilities; and (2) the January 13, 2016 Investigation Report of Judge Chiongson-Trocio be treated as an administrative complaint against Atty. Eric De Vera, Clerk of Court, Roena V. Dioneo, Clerk IV, and Ralph Balili, Sheriff IV, all of the OCC, RTC, Silay City; Vicente Quinicot, Sheriff, Anthony B. Carisma, Process Server, and Jorge Dequilla, Utility Aide, all of RTC, Silay City, Br. 40; and Elizalde Jueves, Process Server, and Enrico Espinosa, Court Aide, both of RTC, Silay City, Br. 69; and they be directed to comment on the Investigation Report within a non-extendible period of thirty (30) days from notice.

The OCA reasoned that Laspiñas' acts of soliciting or receiving money from litigants – by preparing petitions for a fee – and withdrawing without authority the publication fees constitute Grave Misconduct that warrant her immediate dismissal from the service for violation of "Sec. 4, Canon I, and Sec. 2 (b) and (e) [Canon III] of A.M. No. 03-06-13-SC." In addition, the OCA noted that Laspiñas, together with Nallos, was likewise charged with Grave Misconduct and serious dishonesty, and violation of Republic Act No. 6317 (Code of Conduct and Ethical Standards for Public Officials), in two separate administrative complaints: OCA IPI Nos. 12-3971-P and 12-3875-P. OCA IPI No. 12-3971-P stemmed from the misappropriation of publication fees in several cases pending before RTC, Br. 40, wherein Nallos admitted that they have taken and used the publication fees, while in OCA IPI No. 12-3875-P, Laspiñas and Nallos prepared pleadings for and demanded nine thousand pesos (₱9,000.00) from the complainant for the filing of the petition.

Anent the other findings of Judge Chiongson-Trocio, the OCA observed that: (1) Dioneo's act of receiving money (together with Laspiñas) from the property owner's daughter in a Cadastral case would make her liable for violation of "Section 4, Canon 1 and Sec. 2 (b) and (e) of A.M. No. 03-06-13-SC"; (2) Atty. De Vera and Mae Espinosa's statement in their Joint Affidavit of

Cohabitation would render the former liable for immorality; (3) the act of Atty. De Vera, Quinicot, and Balili in soliciting money from Mars Finance would render them liable for violation of "Sec. 4, Canon I, and Sec. 2 (b) and (e) [Canon III of A.M. No. 03-06-13-SC]"; and (4) there were other court employees involved in the illegal activities in the RTC, Silay City, per the statement of the various witnesses interviewed by Judge Chiongson-Trocio, who should be required to comment on the report in order to afford them due process. [30]

The Issue Before the Court

The essential issue for the Court's resolution is whether Laspiñas should be held administratively liable for the acts complained of.

The Court's Ruling

The Court agrees with the findings and recommendations of the OCA.

Misconduct has been defined as any unlawful conduct, on the part of the person concerned with the administration of justice, prejudicial to the rights of the parties or to the right determination of the cause.[31] It implies wrongful, improper, or unlawful conduct, not a mere error of judgment, motivated by a premeditated, obstinate or intentional purpose, although it does not necessarily imply corruption or criminal intent, and must have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office.[32]

Under our rules, misconduct maybe gross or simple. In order to differentiate the two, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must

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[30] *Id*. at 480-497.

[31] *Rodriguez v. Eugenio*, 550 Phil. 78, 93 (2007). See also *Ramos v. Limeta*, 650 Phil. 243, 248-249 (2010); citation omitted.

[32] See *id*. at 93-94; See also *Corpuz v. Rivera*, A.M. No. P-16-3541 [Formerly OCA IPI No. 12-3915-P], August 30, 2016.

necessarily be manifest in the former.[33] Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his position or office to procure some benefit for himself or for another person, contrary to duty and the rights of others.[34] Sections 1 and 2 Canon I, and Section 2 (b) and (e), Canon III of the Code of Conduct for Court Personnel[35] prohibits court personnel from securing for themselves or for others, any benefit or advantage through their official position or in the performance of their functions. These sections respectively provide:

CANON I
FIDELITY TO DUTY

SEC. 1. Court personnel shall not use their official position to secure unwarranted benefits, privileges or exemptions for themselves or for others.

SEC. 2. **Court personnel shall not solicit or accept any gift, favor or benefit on any explicit or implicit understanding that such gift, favor or benefit shall influence their official actions.**

x x x x x x x x x

CANON III
CONFLICT OF INTEREST

SEC 2. Court personnel shall not:

x x x x x x x x x

(b) **Receive tips or other remuneration for assisting or attending to parties engaged in transactions or involved in actions or proceedings with the Judiciary**.

x x x x x x x x x

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[33] See *Corpuz v. Rivera*, *supra* note 32. See also *Ramos v. Limeta, supra* note 31, at 248-249.

[34] *Dela Cruz v. Malunao*, 684 Phil. 493, 504 (2012). See also *Corpuz v. Rivera*, *supra* note 33, citing *OCA v. Amor*, 745 Phil. 1, 8 (2014).

[35] Took effect on June 1, 2004 pursuant to A.M. No. 03-06-13-SC promulgated by the Court.

(e) Solicit or accept any gift, loan, gratuity, discount, favor, hospitality or service under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the court personnel in performing official duties. (Emphases supplied)

In this case, Laspiñas' acts of withdrawing without authority the publication fees deposited with the OCC and preparing petitions in special proceedings cases for a fee on several occasions – per the corroborating statements of the witnesses interviewed by Judge Chiongson-Trocio – clearly show her flagrant disregard of the law and the rules, and serve to validate the various allegations and rumors of her proclivity to corruption, thereby constituting violations of Sections 1 and 2, Canon I, and Section 2 (b) and (e), Canon III of the Code of Conduct for Court Personnel.

Under Sections 46 (A) (3)[36] and 52 (a)[37], Rule 10, of the Revised Rules on Administrative Cases in the Civil Service[38] (RRACCS), in relation to Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292,[39] Grave

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[36] Section 46 (A) (3), Rule 10 of the RRACCS reads:

Section 46. *Classification of Offenses*. – Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following grave offenses shall be punishable by dismissal from the service:

x x x x x x x x x

3. Grave Misconduct;

x x x x x x x x x

[37] Section 52 (a), Rule 10 of the RRACCS states:

Section 52. *Administrative Disabilities Inherent in Certain Penalties.-*

a. The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking civil service examinations.

x x x x x x x x x

[38] Promulgated on November 8, 2011 by the Civil Service Commission (CSC) through CSC Resolution No. 1101502.

[39] Entitled "INSTITUTING THE 'ADMINISTRATIVE CODE OF 1987'," approved on July 25, 1987.

Misconduct is a grave offense that carries the extreme penalty of dismissal from the service for the first offense, with cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for holding public office. On the other hand, conduct prejudicial to the best interest of the service, likewise a grave offense under Section 46 (B) (8)[40] of the RRACCS, merits the penalty of suspension for six (6) months and one (1) day to one (1) year for the first offense, and dismissal for the second offense.

The Court is not unaware that in certain cases, it exercised its discretion to assess mitigating circumstances such as Laspiñas' twenty (20) years, or more, of service.[41] The Court, however, cannot apply this exception to the present case for, as already pointed herein, the findings – that Laspiñas had been soliciting and/or receiving money from litigants on the promise of favorable action on their cases and had been using and/or misusing the publication fees for personal use – show her proclivity for corruption and abuse of position.

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[40] Section 46. (B) (8), Rule 10 of the RRACCs reads:

Section 46. *Classification of Offenses*.– Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

x x x x x x x x x

B. The following grave offenses shall be punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense:

x x x x x x x x x

8. Conduct prejudicial to the best interest of the service;

x x x x x x x x x

[41] See Section 48 of the RRACCS, which pertinently states:

Section 48. *Mitigating and Aggravating Circumstances.*– In the determination of the penalties to be imposed, mitigating and/or aggravating circumstances attendant to the commission of the offense shall be considered.

The following circumstances shall be appreciated:

x x x x x x x x x

n. Length of service; or

x x x x x x x x x

As a public servant, Laspiñas is expected at all times to exhibit the highest sense of honesty, integrity, and responsibility that the Constitution, under Article XI, Section 1[42] mandates.[43] Moreover, as a court employee, she ought to have been well aware of the high standards of propriety and decorum expected of employees in the judiciary as "any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it."[44] Without doubt, she has shown her unfitness for public office. In this light, the OCA correctly held Laspiñas administratively liable for gross misconduct and conduct prejudicial to the best interest of the service. Pursuant to Section 50[45] of the RRACCS, the Court finds the penalty of dismissal proper.

As a final note, it is well to reiterate that the administration of justice is a sacred task that the persons involved in it, from the judges to the most junior clerks, ought to live up to the strictest standard of honesty and integrity.[46] Their conduct, at all times, must not only be characterized by propriety and decorum but, above all else, must be above suspicion.[47] This Court has never wavered in its vigilance in eradicating the so-called "bad eggs" in the judiciary, and, whenever warranted by the gravity of the offense, the supreme

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[42] Article XI, Section 1 of the Constitution states:

Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

[43] See *Corpuz v. Rivera*, *supra* note 32; and *Rodriguez v. Eugenio*, *supra* note 31, at 93.

[44] Code of Conduct for Court Personnel, fourth Whereas clause. See also *Corpuz v. Rivera*, *supra* note 32.

[45] Section 50 of the RRACCS states:

Section 50. *Penalty for the Most Serious Offense.* If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.

[46] See *Rodriguez v. Eugenio*, *supra* note 31, at 93.

[47] *Id*. at 93.

penalty of dismissal in an administrative case is meted to erring personnel,[48] as the Court now does in this case.

WHEREFORE, the Court finds May N. Laspiñas, Legal Researcher/Officer-In-Charge, of the Regional Trial Court of Silay City, Negros Occidental, Branch 40, **GUILTY** of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service. Accordingly, she is hereby **DISMISSED** from the service effective immediately, with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch or agency of the government, including government-owned or controlled corporations, without prejudice to her criminal liabilities.

Further, the Investigation Report dated January 13, 2016 submitted by Judge Dyna Doll Chiongson-Trocio is hereby treated as an administrative complaint against: Atty. Eric De Vera, Clerk of Court; Roena V. Dioneo, Clerk IV; and Ralph Balili, Sheriff IV; all from the Office of the Clerk of Court of the Regional Trial Court of Silay City, Negros Occidental; Vicente Quinicot, Sheriff; Anthony B. Carisma, Process Server; and Jorge Dequilla, Utility Aide; all from the Regional Trial Court of Silay City, Negros Occidental, Branch 40; and Elizalde Jueves, Process Server; and Enrico Espinosa, Court Aide; both from the Regional Trial Court of Silay City, Negros Occidental, Branch 69. They are directed to file their comment thereto within a non-extendible period of thirty (30) days from notice of this Resolution.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Mendoza, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

Reyes, J., on official leave.

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[48] *Mendoza v. Tiongson*, 333 Phil. 508, 510 (1996). See also *Nuez v. Cruz-Apao*, 495 Phil. 270, 272 (2005).

EN BANC

[A.M. No. SCC-10-14-P. February 21, 2017]
(Formerly OCA IPI No. 09-31-SCC-P)

JUDGE BENSAUDI A. ARABANI, JR., *petitioner, vs.* **RAHIM A. ARABANI, Junior Process Server, and ABDURAJI G. BAKIL, Utility Worker I, both from Shari'a Circuit Court, Maimbung, Sulu,** *respondents.*

[A.M. No. SCC-10-15-P. February 21, 2017]
(Formerly A.M. No. 06-3-03-SCC)

JUDGE BENSAUDI A. ARABANI, JR., 4th Shari'a Circuit Court, Maimbung, Sulu, *petitioner, vs.* **RODRIGO RAMOS, JR., Clerk of Court, 4th Shari'a Circuit Court, Maimbung, Sulu,** *respondent.*

[A.M. No. SCC-11-17. February 21, 2017]
(Formerly A.M. No. 10-34-SCC)

Clerk of Court RODRIGO RAMOS, JR., Process Server RAHIM A. ARABANI and Utility Worker I ABDURAJI G. BAKIL, all of 4th Shari'a Circuit Court, Maimbung, Sulu, and Utility Clerk SHELDALYN[*] I. MAHARAN, 5th Shari'a Circuit Court, Patikul, Sulu, *petitioners, vs.* **JUDGE BENSAUDI A. ARABANI, JR., 4th Shari'a Circuit Court, Maimbung, Sulu,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; DISHONESTY, DEFINED; PUNCHING OF ANOTHER'S BUNDY CARD/DAILY TIME RECORD (DTR) IS AN ACT OF DISHONESTY.— Dishonesty is defined as the "disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity." As correctly ruled by the

[*] "Sherdalyn" in some parts of the records.

OCA, Abduraji and Rahim are guilty of dishonesty by committing irregularities in the punching of Rahim's bundy card/DTR on three (3) occasions, *i.e.,* on the subject incidents. **The punching of a court employee's DTR is a personal act of the holder which cannot and should not be delegated to anyone else.** Moreover, every court employee has the duty to truthfully and accurately indicate the time of his arrival at and departure from the office. Thus, case law holds that **falsification of DTRs is an act of dishonesty** and is reflective of respondent's fitness to continue in office and of the level of discipline and morale in the service, rendering him administratively liable in accordance with Section 4, Rule XVII of the Civil Service Rules.

2. **ID.; ID.; ID.; ID.; AS THIS CASE INVOLVES FIRST TIME OFFENDERS, THE COURT REDUCED THE IMPOSABLE PENALTY OF DISMISSAL TO SUSPENSION OF SIX (6) MONTHS WITHOUT PAY.—** Section 48, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. Among the circumstances jurisprudentially held as mitigating include, among others, the erring individual's admission of guilt, remorse, high performance rating, and the fact that the infraction complained of is his/her first offense. Thus, in several cases involving first time offenders, as Abduraji and Rahim in this case, the Court has reduced the imposable penalty of dismissal to suspension of six (6) months without pay. Following judicial precedents , the Court adopts the penalty recommended by the OCA, and accordingly suspends Abduraji and Rahim for a period of six (6) months without pay.

3. **ID.; ID.; ID.; REFUSAL TO LEAVE EMPLOYEE'S BUNDY CARD ON THE DESIGNATED RACK CONSTITUTES A VIOLATION OF REASONABLE OFFICE RULE; PENALTY IS REPRIMAND FOR THE FIRST OFFENSE.—** The OCA correctly found Rodrigo to have violated reasonable office rules and regulations when he refused to leave his bundy card or DTR on the designated rack despite orders from Judge Arabani. Records show that Rodrigo himself admitted that he did not leave his bundy card/DTR on the designated bundy card rack for the months of January and February 2010 (not the months complained of) for reasons of convenience, and

from the months of April to September 2010 for fear of getting lost. As aptly observed by the OCA, "[t]he reason he provided is not convincing enough and raises doubt as to its truthfulness since other court employees are able to comply and leave their bundy cards on the racks specifically provided therefor." Violation of reasonable office rules and regulations is only a light offense punishable with reprimand for the first offense.

4. ID.; ID.; ID.; FREQUENT UNAUTHORIZED ABSENCES, ESTABLISHED; PENALTY OF SIX (6) MONTHS AND ONE (1) DAY SUSPENSION, IMPOSED.— While the mere failure to file a leave of absence in advance does not *ipso facto* render an employee administratively liable, **the unauthorized leave of absence becomes punishable if the absence is frequent or habitual**. An officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the Leave law at least three (3) months in a semester or at least three (3) consecutive months during the year. In this case, Rodrigo incurred consecutive unauthorized monthly absences of more than 2.5 days from April to September 2010, rendering him administratively liable for the offense of **frequent unauthorized absences**. Moreover, contrary to the OCA's finding, the Court finds Rodrigo guilty of loafing or frequent unauthorized absences from duty during regular hours for more than once. It is imperative that as Clerk of Court, Rodrigo should always be at his station during office hours. However, records show that he incurred 12 half day absences from May to September 2010, which were undisputedly without previous notice to the Presiding Judge. x x x Section 23 (q), Rule XIV of the Civil Service Rules punishes "[f]requent unauthorized absences, loafing or frequent unauthorized absences from duty during regular office hours" with suspension for six (6) months and one (1) day to one (1) year for the first offense, and dismissal for the second offense. Records are bereft of showing, however, that Rodrigo had been previously found guilty of such offense. Consequently, the Court deems it proper to impose upon him the penalty of six (6) months and one (1) day suspension.

5. LEGAL ETHICS; JUDGES; MAKING A DRAWING OF A VAGINA AND A PENIS AND THEREAFTER SHOWING IT TO A FEMALE COURT EMPLOYEE CONSTITUTES

SEXUAL HARASSMENT; PENALTY OF SIX (6) MONTHS SUSPENSION, IMPOSED.— The distasteful act by Judge Arabani of making a drawing of a vagina and a penis, and thereafter showing it to an employee of the court of which he is an officer constitutes sexual harassment. It is an act that constitutes a physical behavior of a sexual nature; a gesture with lewd insinuation. To the Court's mind, Judge Arabani deliberately utilized this form of expression, *i.e.*, drawing, to maliciously convey to Sheldalyn his sexual desires over her; hence, his conduct cannot be classified as a mere display of sexually offensive pictures, materials or graffiti under Section 53 (C) (4), Rule X of CSC Resolution No. 01-0940, such as one who is caught watching or reading pornographic materials. Rather, Judge Arabani's behavior should be classified as an analogous case (Section 53 [B] [5]) of verbal abuse with sexual overtones under Section 53 (B) (4) of the same issuance, which thus, qualifies the same as a less grave offense. x x x Accordingly, as it appears that this is Judge Arabani's first infraction of this kind, the Court imposes upon him the penalty of suspension for a period of six (6) months.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court are consolidated petitions involving the Judge and staff of the 4th Shari'a Circuit Court (4th SCC) of Maimbung, Sulu.

The Facts

1. In **A.M. No. SCC-10-14-P:**

In a letter[1] complaint dated July 17, 2009, Presiding Judge Bensaudi A. Arabani, Jr. (Judge Arabani) charged respondents Rahim A. Arabani (Rahim), Junior Process Server, and Abduraji G. Bakil (Abduraji), Utility Worker I, with conduct unbecoming of a court employee, dishonesty, insubordination, and misconduct[2]

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[1] *Rollo* (A.M. No. SCC-11-17), pp. 35-36.

[2] See 1st Indorsement dated September 25, 2009; *id.* at 33.

arising out of Bakil's alleged punching of Rahim's bundy card on three (3) occasions despite being repeatedly warned by Judge Arabani.[3]

In a joint letter[4] reply dated October 22, 2009, Rahim and Abduraji countered that there were only two (2) instances of punching involved, *i.e.*: (*a*) when Abduraji accidentally punched Rahim's bundy card one afternoon that Rahim was absent, mistakenly thinking that it was his bundy card, but he immediately informed Judge Arabani of the mistake; and (*b*) when Abduraji punched Rahim's bundy card upon seeing the latter approximately 3 to 4 meters away from the bundy clock with his way blocked by another person, as it was "nearing time" already. The latter incident was seen by Judge Arabani who happened to be behind Rahim, and scolded them. However, Rahim immediately erased the time and punched his bundy card again. They both apologized to Judge Arabani and promised that it would not happen again.[5]

In the same letter, Rahim and Abduraji made counter-charges against Judge Arabani, which are among the subject matter of **A.M. No. SCC-11-17**, which will be discussed hereunder.

2. In **A.M. No. SCC-10-15-P**:

In a letter[6] dated May 13, 2010, Judge Arabani charged Clerk of Court Rodrigo Ramos, Jr. (Rodrigo) with conduct unbecoming a court employee, alleging, among others, that, from the time Rodrigo reported back to his station at the 4th SCC in January 2010, after his detail to the 3rd SCC of Parang-Indanan, Sulu was revoked by the Court in a Resolution[7] dated November 17, 2009 in **A.M. No. 06-3-03-SCC**, Rodrigo: (*a*) was constantly not at his assigned table; (*b*) roams in and out of the office openly; (*c*) does not attend to his work; (*d*) refused to comply with the directive to place his bundy

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[3] See *id*. at 35-36.

[4] *Id*. at 51-55.

[5] See *id*. at 51.

[6] *Rollo* (A.M. No. SCC-10-15-P), pp. 2-4.

[7] *Rollo* (A.M. No. 06-3-03-SCC), pp. 162-163.

card on the designated rack, thereby making it difficult to monitor the correctness and accuracy of the entries therein for the months of March and April 2010; and (*e*) did not properly fill-up his Application for Leave (leave application) filed in April 2010 with the specific dates of his intended leave of absence.[8] In a letter[9] dated May 17, 2010, Judge Arabani requested that all succeeding unverified/unsigned bundy cards of Rodrigo be made part of the complaint.

Responding to the Court's Resolution[10] dated August 24, 2010 directing him to comment on the charges against him, Rodrigo averred that he kept with him his bundy cards for the months of January and February 2010[11] for reasons of convenience.[12] He, however, complied with Judge Arabani's directive to place his March 2010 bundy card on the designated rack[13] but the latter took and hid the same in bad faith, and submitted the same to the Leave Division, Office of the Court Administrator (OCA) after a few months without signing the same.[14] Accordingly, in a letter[15] dated October 27, 2010 to the Leave Division, OCA, Rodrigo manifested that he is submitting his April to September 2010 Daily Time Records (DTRs) sans Judge Arabani's signature.[16]

Further, Rodrigo denied the charge of "loafing," and alleged that since the court had no clients for the most part, and considering the strained relations between him and Judge Arabani who surrounded himself with bodyguards who tried to intimidate him, for his own protection, he started to place himself within close

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[8] *Rollo* (A.M. No. SCC-10-15-P), pp. 2-3.

[9] *Rollo* (A.M. No. SCC-10-14-P), p. 149.

[10] *Id*. at 158-159.

[11] See *rollo* (A.M. No. SCC-10-15-P), p. 74.

[12] See *id*. at 78.

[13] See *id.* at 74.

[14] See *id*. at 63.

[15] *Id.* at 56.

[16] *Id.*

range of the security guards and the Philippine marines detailed at the Hall of Justice which is a stone's throw away from his office, and where he can clearly see any client who goes to the adjoining Shari'a Building.[17] He, thus, claimed that he started incurring absences as an act of self-preservation for fear of being killed.[18]

3. In **A.M. No. SCC-11-17**:

In separate Affidavits[19] both dated May 31, 2010, Rahim and Abduraji charged Judge Arabani with conduct unbecoming of a Judge, and many abuses consisting, among others, of his absences without filing the corresponding leaves of absence, and toleration of the absences and tardiness of members of his family.[20] Rahim further claimed that Judge Arabani was courting a court employee, Sheldalyn A. Maharan (Sheldalyn), who he asked to accompany him on his motorcycle to go around town, professing his love and buying her gifts.[21] At one time, Judge Arabani made a drawing of a vagina and a penis and tried to show it to Sheldalyn, but their Clerk, Mirad Ahmad (Mirad), grabbed the drawing, tore the same, and told Judge Arabani "Lummuh kaw sir."[22] The incident was reported to Rodrigo who even picked up the drawing from the wastebasket.[23]

On the other hand, Sheldalyn, in an Affidavit[24] dated January 26, 2010, charged Judge Arabani of sexual harassment, alleging,

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[17] See *id*. at 64-65.

[18] See *id.* at 64 and 69.

[19] *Rollo* (A.M. No. SCC-11-17), pp. 10-12 (Affidavit of Rahim) and 23-24 (Affidavit of Abduraji). Their earlier Affidavits dated January 26, 2010 (Rahim; *id*. at 19-20) and January 18, 2010 (Abduraji; *id*. at 25) which were sworn to before Rodrigo, beyond the latter's competence, were returned by Court Administrator Jose Midas P. Marquez for failure to comply with the required verification; see *id*. at 4-5.

[20] See *id*. at 9 and 11.

[21] See *id*. at 10 and 21.

[22] See *id*. at 10, 21, and 337.

[23] See *id*. at 10.

[24] *Id.* at 21-22.

among others, that: (*a*) when they were still holding office at the residence of Judge Arabani, he would take her for a ride on his motorcycle, and while going around town, he would court her; (*b*) there were instances when he would suddenly step on the brakes so that her body would touch his; (*c*) he once took her to a snack house, called her at home, and bought her lotion, baby powder, and other things; (*d*) he also made a drawing of a penis and a vagina on a piece of paper and tried to show it to her, but the same was crumpled by Mirad who threw it in a wastebasket; (*e*) one time, he forced her to learn karate, and while teaching her, she felt him caressing her arms; (*f*) when he professed his for love for her, she started avoiding him by going out with Rodrigo; and (*g*) because she was afraid, she and her officemate, Jean Maldisa (Mrs. Maldisa) would accompany each other in going to the comfort room.[25]

In several letters dated May 8, 2010,[26] June 16, 2010,[27] and July 30, 2010,[28] Rodrigo charged Judge Arabani with grave abuse of authority, verbal abuses, dishonesty in his certificate of service, and sexual harassment,[29] arising out of the following acts, among others: (*a*) harassing him by taking and hiding his DTR for the month of March 2010; (*b*) surrounding himself with goons who tried to intimidate him with their "tiger look";[30] (*c*) his wife's tardiness;[31] (*d*) irregularities in the conduct of flag ceremony;[32] (*e*) molestation of a "labandera" and her teenage daughter;[33] and (*f*) courting Sheldalyn to whom he had shown a drawing of a penis and a vagina.[34]

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[25] See *id*. at 21.

[26] Verified on May 17, 2010; *id*. at 1-2.

[27] *Id*. at 6-8.

[28] *Id*. at 37-38.

[29] *Id*. at 2.

[30] See *id*. at 6-7.

[31] See *id*. at 37-38.

[32] See *id*. at 1 and 38.

[33] *Id*. at 7.

[34] *Id*. at 37.

Responding to the Court's directive[35] to comment on the charges against him, Judge Arabani filed his Comment[36] dated October 27, 2010 essentially denying the same, and claiming that the accusations were merely fabricated to muddle the issues involving the complaints he filed against Rodrigo, Rahim and Abduraji,[37] and were mere repetition of issues already resolved and terminated in **A.M. No. 06-3-03-SCC**,[38] like the one involving his wife's purported tardiness in coming to office, which remained unsubstantiated and uncorroborated in the present complaints.[39] He further maintained that: (*a*) his absences were covered with the corresponding leave applications[40] and/or certificates of appearance;[41] (*b*) he does not have even a single body guard;[42] (*c*) Rodrigo was the only employee complaining about the location of the bundy clock and the placing of the bundy card on the designated rack;[43] (*d*) he did not steal Rodrigo's bundy card, which was submitted to the OCA together with his leave application to support the complaint against him;[44] (*e*) it is not true that he was courting Sheldalyn who is publicly known to be a tomboy, and the story of immorality was fabricated to destroy his credibility; and (*f*) the drawing of a penis and vagina which purportedly occurred in 2005 when the court was still holding office in his residence was merely fabricated; otherwise, it would have been included in Rodrigo's previous complaints against him between the years 2005 and 2006.[45]

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[35] See 1st Indorsement dated September 6, 2010; *id*. at 79.

[36] *Id*. at 100-131.

[37] *Id.* at 111.

[38] *Id*. at 104-105.

[39] See *id*. at 112 and 117.

[40] *Id*. at 165-167.

[41] See *id*. at 105 and 120.

[42] *Id*. at 109.

[43] *Id*. at 111.

[44] *Id*. at 115.

[45] *Id*. at 118.

In a Resolution[46] dated November 15, 2011, the cases were consolidated, and referred for joint investigation, recommendation and report by the Presiding Judge of the Regional Trial Court of Jolo, Sulu, Branch 3.

The Investigating Judge's Findings and Recommendations

In a Joint Investigation, Report and Recommendation[47] dated April 8, 2013, the Investigating Judge, Betlee-Ian J. Barraquias (Judge Barraquias), made the following findings and recommendations:

With respect to **A.M. No. SCC-10-14-P**, Judge Barraquias found that there was an irregularity in the punching of the bundy card of Rahim by Abduraji, and Rahim's silence and inaction despite his awareness thereof made him equally responsible as he is deemed to have consented to the commission of the improper act.[48] This is bolstered by the fact that Abduraji: (*a*) admitted having punched the bundy card of Rahim sometime in the first week of June 2009 (first incident) but explained that he did the same by mistake, thinking that it was his own bundy card, and on June 16, 2009 (second incident), thinking that Rahim was already at the door of the office; and (*b*) averred that he could not recall whether or not he punched the bundy card of Rahim on June 30, 2009 (third incident; subject incidents).[49] Judge Barraquias then concluded that their collaboration (*1*) is a clear violation of (*a*) Office of the Court Administrator (OCA) Circular No. 7-2003 on the accomplishment/submission of Certificates of Service and Daily Time Records, and (*b*) Section 4, Rule XVII of the Omnibus Rules Implementing Book V of Executive Order No. 292[50] (Civil Service Rules); and (*2*) is an act of dishonesty. Noting, however, that it is the first offense of Abduraji

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[46] *Rollo* (A.M. No. SCC-10-14-P), pp. 162-163; *rollo* (A.M. No. SCC-10-15-P), pp. 107-108; *rollo* (A.M. No. SCC-11-17), pp. 261-262.

[47] *Rollo* (A.M. No. SCC-10-14-P), pp. 112-127.

[48] *Id*.

[49] *Id*. at 115.

[50] Otherwise known as the Administrative Code of 1987.

and Rahim, he recommended that they be suspended for six (6) months without pay with a stern warning that similar acts would be dealt with more severely.[51]

On the charge of insubordination and conduct unbecoming of court employees, however, Judge Barraquias found no deliberate intent on the part of Abduraji and Rahim to defy the authority of Judge Arabani and, thus, deemed it proper to recommend that they be reprimanded and given a stern warning for their non-compliance with the latter's memorandum requiring them to explain the *subject incidents* in writing.[52]

Anent **A.M. No. SCC-10-15-P**, Judge Barraquias found sufficient evidence on record showing that Rodrigo (*a*) did not leave his bundy card at the designated bundy card rack,[53] and (*b*) failed to heed Judge Arabani's directive to refrain from bringing home and carrying in his possession his bundy card, and to leave it in its designated rack. Consequently, he recommended that Rodrigo be meted a two (2) month forfeiture of salary (February and March 2010; *sic*) with a stern warning that any similar incident would be dealt with more severely. However, he found to be unsubstantiated the allegations that Rodrigo was constantly not at his assigned table, roams in and out of the office, and is not attending to his work. He further held that Rodrigo's failure to indicate the specific dates of his absence was a mere formal defect which can be remedied by specifying the dates of his leave.[54]

As regards **A.M. No. SCC-11-17**, Judge Barraquias found that the issues raised by Rodrigo, Rahim and Abduraji against Judge Arabani were mere rehash of those already deliberated upon by the Court in A.M. No. 06-3-03-SCC, which was already closed and terminated. Accordingly, Judge Barraquias refused to pass upon the same.[55]

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[51] *Rollo* (A.M. No. SCC-10-14-P), pp. 116-117.

[52] *Id*. at 117-118.

[53] *Id*. at 120.

[54] *Id*. at 121.

[55] *Id*. at 122.

On the other hand, Judge Barraquias recommended the dropping of the sexual harassment charge filed by Sheldalyn against Judge Arabani for insufficiency of evidence,[56] noting that other than her own account and the parties to this case who have declared their ill-feelings against Judge Arabani, Sheldalyn has no other witness to corroborate the said charge.[57] On the contrary, the charge was disputed by the testimony of Mrs. Maldisa which failed to show any single act of sexual harassment committed by Judge Arabani on Sheldalyn.[58] Nonetheless, Judge Barraquias found it an established fact that Judge Arabani made a drawing of a vagina and a penis in front of his staff, and recommended that the latter (*a*) be reprimanded therefor with a stern warning that any similar distasteful acts would be dealt with more severely; and (*b*) undergo mandatory gender sensitivity seminar so that he may be apprised of the value of giving due respect to the opposite sex.[59]

In a Resolution[60] dated June 23, 2015, the Court referred Judge Barraquias' Joint Investigation, Report and Recommendation dated April 8, 2013 to the OCA for evaluation, report and recommendation.

The OCA's Evaluation, Report and Recommendation

In a Memorandum[61] dated August 25, 2016, the OCA adopted the findings[62] contained in Judge Barraquias' Joint Investigation, Report and Recommendation dated April 8, 2013, and recommended:

1. in **A.M. No. SCC-10-14-P**, that: (*a*) Rahim and Abduraji be found guilty of committing irregularities in the punching of

[56] *Id*. at 126.

[57] *Id*. at 124.

[58] *Id*. at 125.

[59] *Id*. at 126.

[60] *Rollo* (A.M. No. 06-3-03-SCC), pp. 240-241; *rollo* (A.M. No. SCC-10-14-P), pp. 176-177; *rollo* (A.M. No. SCC-11-17), pp. 584-585.

[61] *Rollo* (A.M. No. SCC-10-14-P), pp. 181-195.

[62] *Id*. at 192.

Rahim's bundy card on three (3) occasions (*i.e.*, on the subject incidents), which are also acts of dishonesty, and be suspended for six (6) months without pay with a stern warning that similar acts would be dealt with more severely; (*b*) the complaint for insubordination and conduct unbecoming a court employee against Rahim and Abduraji be dismissed for lack of intent to deliberately defy Judge Arabani's authority as the head of office; and (*c*) Rahim and Abduraji be reprimanded for their non-compliance with Judge Arabani's memorandum requiring them to explain the subject incidents in writing, and sternly warned that a repetition of the same or any similar act shall also be dealt with severely;[63]

2. in **A.M. No. SCC-10-15-P**, that: (*a*) Rodrigo be found guilty of violation of reasonable office rules and regulations for his refusal to leave his bundy card on the designated rack, and be meted the penalty of forfeiture of two (2) months' salary (February and March 2010; *sic*) with a stern warning that the commission of the same or any similar act shall be dealt with more severely; (*b*) the complaint charging Rodrigo of being constantly not at his assigned table, roaming in and out of the office, and not attending to his work (loafing) be dismissed for insufficiency of evidence; and (*c*) Rodrigo be allowed to remedy his failure to indicate the specific dates of his leave of absence for April 2010 for being a mere formal defect;[64] and

3. in **A.M. No. SCC-11-17**, that: (*a*) the complaint of sexual harassment filed by Sheldalyn against Judge Arabani be dismissed for insufficiency of evidence; (*b*) Judge Arabani be found guilty of the distasteful act of drawing a vagina and a penis in front of his court staff, and be reprimanded and sternly warned that a repetition of the same or any similar act will be dealt with more severely; and (*c*) the other charges raised therein be dismissed for being a mere rehash of those already deliberated upon and resolved by the Court *En Banc* in the Resolution dated November 17, 2009 in **A.M. No. 06-3-03-SCC**.[65]

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[63] *Id*. at 194.

[64] *Id*.

[65] *Id*. at 195.

The Court's Ruling

The Court adopts the factual findings of the OCA, but differs in some of the conclusions and the imposed penalties as shall be hereunder discussed:

1. In **A.M. No. SCC-10-14-P:**

a. on the charge of dishonesty against Abduraji and Rahim:

Dishonesty is defined as the "disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity."[66] As correctly ruled by the OCA, Abduraji and Rahim are guilty of dishonesty by committing irregularities in the punching of Rahim's bundy card/DTR on three (3) occasions, *i.e.*, on the subject incidents. **The punching of a court employee's DTR is a personal act of the holder which cannot and should not be delegated to anyone else.**[67] Moreover, every court employee has the duty to truthfully and accurately indicate the time of his arrival at and departure from the office.[68] Thus, case law holds that **falsification of DTRs is an act of dishonesty** and is reflective of respondent's fitness to continue in office and of the level of discipline and morale in the service,[69] rendering him administratively liable in accordance with Section 4,[70] Rule XVII of the Civil Service Rules.

Under Section 22, Rule XIV of the Civil Service Rules, falsification of official documents (such as DTRs) and dishonesty

[66] *Light Rail Transit Authority v. Salvaña*, 736 Phil. 123, 151 (2014).

[67] *Garcia v. Bada*, 557 Phil. 526, 530 (2007).

[68] See Item 1 of OCA Circular No. 7-2003 dated January 9, 2003, which pertinently provides:

1. After the end of each month, every official and employee of each court shall accomplish the Daily Time Record (Civil Service Form No. 48)/Bundy Card, **indicating therein truthfully and accurately the time of arrival in and departure from the office**. x x x (Emphasis supplied)

[69] *Re: Report on the Irregularity in the Use of Bundy Clock by Alberto Salamat, Sheriff IV, RTC-Br. 80, Malolos City*, 592 Phil. 404, 414 (2008).

[70] Section 4. Falsification or irregularities in the keeping of time records will render the guilty officer or employee administratively liable without prejudice to criminal prosecutions as the circumstances warrant.

are both grave offenses for which the penalty of dismissal is meted even for first time offenders. Nonetheless, while it is the Court's duty to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, it also has the discretion to temper the harshness of its judgment with mercy, taking in mind that the objective for discipline is not their punishment, but the improvement of the public service, and the preservation of the public's faith and confidence in the government.[71]

In this relation, Section 48,[72] Rule 10 of the Revised Rules on Administrative Cases in the Civil Service grants the

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[71] See *Exec. Judge Roman v. Fortaleza,* 650 Phil. 1, 8 (2010).

[72] Section 48. *Mitigating and Aggravating Circumstances.*– In the determination of the penalties to be imposed, mitigating and/or aggravating circumstances attendant to the commission of the offense shall be considered.

The following circumstances shall be appreciated:

a. Physical illness;

b. Good faith;

c. Malice;

d. Time and place of offense;

e. Taking undue advantage of official position;

f. Taking undue advantage of subordinate;

g. Undue disclosure of confidential information;

h. Use of government property in the commission of the offense;

i. Habituality;

j. Offense is committed during office hours and within the premises of the office or building;

k. Employment of fraudulent means to commit or conceal the offense;

l. First offense;

m. Education

n. Length of service; or

o. Other analogous circumstances.

In the appreciation thereof, the same must be invoked or pleaded by the proper party, otherwise, said circumstances will not be considered in the imposition of the proper penalty. The disciplining authority, however, in the interest of substantial justice may take and consider these circumstances *motu proprio*.

disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. Among the circumstances jurisprudentially held as mitigating include, among others, the erring individual's admission of guilt, remorse, high performance rating, and the fact that the infraction complained of is his/her first offense.[73] Thus, in several cases involving first time offenders,[74] as Abduraji and Rahim in this case, the Court has reduced the imposable penalty of dismissal to suspension of six (6) months without pay. Following judicial precedents, the Court adopts the penalty recommended by the OCA, and accordingly suspends Abduraji and Rahim for a period of six (6) months without pay.

b. On the charge of insubordination and conduct unbecoming a court employee against Abduraji and Rahim:

Insubordination is defined as a refusal to obey some order, which a superior officer is entitled to give and have obeyed, and imports a **willful or intentional disregard** of the lawful and reasonable instructions of the Judge.[75]

In this case, the Court finds to be likewise well-taken the OCA's recommendation for the dropping of the said charges against Abduraji and Rahim considering the perceived absence of intent on their part to deliberately defy Judge Arabani's authority as the head of office. However, they should be reprimanded for their failure to comply with Judge Arabani's memorandum requiring them to explain the subject incidents in writing, which constitutes a violation of reasonable office rules and regulations, a light offense punishable with reprimand for the first offense.[76]

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[73] See *Office of the Court Administrator v. Capistrano*, 738 Phil. 1, 5 (2014).

[74] See *Re: Irregularity in the Use of Bundy Clock by Castro and Tayag, Social Welfare Officers II, both of the RTC, OCC, Angeles City,* 626 Phil. 16, 21 (2010)*; Office of the Court Administrator v. Judge Indar,* 725 Phil. 164, 175 (2014); and *Office of the Court Administrator v. Capistrano, id.*

[75] See *Judge Buenaventura v. Mabalot*, 716 Phil. 476, 496 (2013).

[76] See Section 22, Rule XIV of the Civil Service Rules.

2. in **A.M. No. SCC-10-15-P**:

The OCA correctly found Rodrigo to have violated reasonable office rules and regulations when he refused to leave his bundy card or DTR on the designated rack despite orders from Judge Arabani. Records show that Rodrigo himself admitted that he did not leave his bundy card/DTR on the designated bundy card rack for the months of January and February 2010 (not the months complained of) for reasons of convenience, and from the months of April to September 2010 for fear of getting lost.[77] As aptly observed by the OCA, "[t]he reason he provided is not convincing enough and raises doubt as to its truthfulness since other court employees are able to comply and leave their bundy cards on the racks specifically provided therefor."[78]

Violation of reasonable office rules and regulations is only a light offense punishable with reprimand for the first offense.[79] Nonetheless, in addition to such non-compliance, Rodrigo likewise failed to secure the signature of Judge Arabani on his bundy cards for the months of March to September 2010 when they are required to be certified correct by the Presiding Judge.[80] Rodrigo's avowed reason for his failure to leave his bundy cards on the designated rack having been found to be unjustified, the forfeiture of his entire salary for the said months should have been in order, if not for the Certification[81] dated October 5, 2010 issued by Mirad, Clerk II/Timekeeper of the 4th SCC of Maimbung, Sulu, certifying the number of absences incurred by Rodrigo for the months of April through September 2010,

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[77] See *rollo* (A.M. No. SCC-10-15-P), pp. 56 and 78.

[78] See *rollo* (A.M. No. SCC-10-14-P), p. 193.

[79] See Section 22, Rule XIV of the Civil Service Rules.

[80] See Item 3 of OCA Circular No. 7-2003 dated January 9, 2003 which pertinently provides:

"3. DTRs/Bundy Cards shall be **certified correct by the Executive/ Presiding Judge** or, in his absence, by the Clerk of Court[.]" (Emphasis supplied)

[81] *Rollo* (A.M. No. SCC-10-15-P), p. 34.

which Judge Arabani submitted, thus, impliedly admitting that Rodrigo was present on the working days not so indicated therein.

In relation thereto, the failure of Rodrigo to specify the number of working days of leave applied for and the inclusive dates in his leave application[82] filed on April 12, 2010, which merely indicated the type of leave as "SPL [special privilege leave] & VL" (vacation leave), is not a mere formal defect that may be remedied by the expedience of subsequently stating the specific dates of leave. It must be pointed out that leave of absence for any reason other than illness of an official or employee or of any member of his immediate family must be contingent upon the needs of the service. Hence, **the grant of vacation leave shall be at the discretion of the head of department/agency**.[83]

In this case, Judge Arabani as the approving authority cannot properly act on Rodrigo's leave application because it was not filled-up completely, rendering the latter's immediately succeeding and continuous absence on the working days on April 19 to 23 and 26 to 30, 2010, and May 4 to 7, 2010 as **unauthorized**. Consequently, the latter shall not be entitled to receive his salary corresponding to the period of his unauthorized leave of absence, but said absences shall not be deducted from his accumulated leave credits, if any.[84]

Records also show that Rodrigo further incurred numerous unauthorized[85] monthly absences from May to September 2010,[86]

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[82] *Rollo* (A.M. No. SCC-10-14-P), p. 154.

[83] See *Chapter 10 (A) (2.1) of the 2002 Revised Manual for Clerks of Court.* See also *Section 51, Rule XVI of the Civil Service Rules, as amended.*

[84] *Chapter 10 (5) of the 2002 Revised Manual for Clerks of Court, and Section 50, Rule XVI of the Civil Service Rules, as amended, commonly provide:*

> "An official/employee who is absent without approved leave shall not be entitled to receive his salary corresponding to the period of his unauthorized leave of absence. It is understood, however that his absence shall no longer be deducted from his accumulated leave credits, if there are any."

[85] See *rollo* (A.M. No. SCC-10-15-P), p. 15.

[86] See *id.* at 57-60.

totalling 44 whole days and 12 half-days.[87] Notably, in letters dated July 30, 2010[88] and October 27, 2010,[89] Rodrigo admitted that he did not submit his bundy cards from April 2010, and his leave applications for Judge Arabani's signature.[90]

While the mere failure to file a leave of absence in advance does not *ipso facto* render an employee administratively liable, **the unauthorized leave of absence becomes punishable if the absence is frequent or habitual**. An officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the Leave law at least three (3) months in a semester or at least three (3) consecutive months during the year.[91]

In this case, Rodrigo incurred consecutive unauthorized monthly absences of more than 2.5 days from April to September 2010,[92] rendering him administratively liable for the offense of **frequent unauthorized absences**. Moreover, contrary to the OCA's finding, the Court finds Rodrigo guilty of loafing or frequent unauthorized absences from duty during regular hours for more than once.[93] It is imperative that as Clerk of Court, Rodrigo should always be at his station during office hours.[94] However, records show that he incurred 12 half day absences from May to September 2010,[95] which were undisputedly without previous notice to the Presiding Judge.

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[87] *Id.* at 34.

[88] *Rollo* (A.M. No. SCC-11-17), pp. 37-38.

[89] *Rollo* (A.M. No. SCC-10-15-P), p. 56.

[90] *Rollo* (A.M. No. SCC-11-17), p. 38.

[91] See Section 23 (q), Rule XIV of the Civil Service Rules.

[92] *Rollo* (A.M. No. SCC-10-15-P), p. 34.

[93] *Branch Clerk of Court Grutas v. Madolaria*, 574 Phil. 526, 534-535 (2008).

[94] See *Office of the Court Administrator vs. Runes,* 730 Phil. 391, 397 (2014).

[95] See Certification dated October 5, 2010 (*rollo* [A.M. No. SCC-10-15-P],

Section 1, Canon IV of the Code of Conduct for Court Personnel mandates that court personnel shall commit themselves *exclusively* to the business and responsibilities of their office during working hours. Court personnel should strictly observe the prescribed office hours and the efficient use of every moment thereof to inspire public respect for the justice system. Thus, court officials and employees are at all times behooved to *strictly* observe official time because the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the last and lowest of its employees.[96] Loafing results in inefficiency and non-performance of duty, and adversely affects the prompt delivery of justice. [97]

Section 23 (q),[98] Rule XIV of the Civil Service Rules punishes "[f]requent unauthorized absences,[99] loafing or frequent

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p. 34), and Rodrigo's DTR's for the said months (*id*. at 57 [May 12, 2010], 58 [May 26 & 28, 2010, and June 16, 2010], 59 [July 8, 12 & 13, 2010, and August 10, 2010], 60 [July 22 & 30, 2010, and September 27, 2010]).

[96] *Office of the Court Administrator vs. Runes*, *supra* note 96, at 398.

[97] *Exec. Judge Roman v. Fortaleza*, *supra* note 71, at 6.

[98] Section 23. x x x.

The following are grave offenses with corresponding penalties:

x x x x x x x x x

(q) Frequent unauthorized absences, loafing or frequent unauthorized absences from duty during regular office hours

1st offense – Suspension for six (6) months and one (1) day to one (1) year

2nd offense – Dismissal

x x x x x x x x x

Section 46 (B) (5), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service likewise provides:

Section 52. *Classification of Offenses*. – Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

x x x x x x x x x

B. The following grave offenses shall be punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from service for the second offense:

unauthorized absences from duty during regular office hours" with suspension for six (6) months and one (1) day to one (1) year for the first offense, and dismissal for the second offense. Records are bereft of showing, however, that Rodrigo had been previously found guilty of such offense. Consequently, the Court deems it proper to impose upon him the penalty of six (6) months and one (1) day suspension. The OCA's recommendation for the forfeiture of salary for the months of February (*sic*; not the month complained of) and March, 2010 must be, therefore, modified accordingly.

3. In **A.M. No. SCC-11-17**:

a. On the various charges hurled by Rodrigo, Rahim and Abduraji against Judge Arabani:

The Court finds no reason to disturb the OCA's recommendation upholding Judge Barraquias' finding that the issues raised by Rodrigo, Rahim and Abduraji against Judge Arabani, save as shall be hereunder discussed, were mere rehash of those already deliberated upon by the Court in A.M. No. 06-3-03-SCC,[100] which was already closed and terminated.[101] Moreover, other than their own testimonies which must be taken with a grain of salt considering their manifest ill-feelings towards Judge Arabani, they failed to present sufficient evidence to corroborate their charges against him.

b. On the charge of sexual harassment against Judge Arabani, and of making a drawing of a vagina and a penis in front of his court staff:

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5. Frequent unauthorized absences, or tardiness in reporting for duty, loafing from duty during regular office hours;

x x x x x x x x x

[99] Jurisprudence dictates that unauthorized absence shall also become punishable if it is detrimental to the service under Section 23 (r) or the official or employee falsified his daily time record under Section 23 (a) or (f) of the same Civil Service Rules. (*Judge Aquino v. Fernandez*, 460 Phil. 1, 12 (2003).

[100] *Rollo* (A.M. No. SCC-10-14-P), p. 193.

[101] *Id.* at 122.

Section 3 of the "Rule on Administrative Procedure in Sexual Harassment Cases and Guidelines on Proper Work Decorum in the Judiciary"[102] defines work-related sexual harassment as follows:

Section 3. *Work–related Sexual harassment; definition*. – Work-related sexual harassment is committed by an official or an employee in the Judiciary who, having authority, influence or moral ascendancy over another in a work environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the latter.

Section 4 of the same rules provides the modes of commission of the said act, to wit:

Section 4. *Work-related Sexual harassment; how committed.*— Work-related sexual harassment is committed when:
(a) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in anyway would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee. It shall include, but shall not be limited to, the following modes:

1. Physical, such as malicious touching, overt sexual advances, and gestures with lewd insinuation.

2. Verbal, such as requests or demands for sexual favors, and lurid remarks.

3. Use of objects, pictures or graphics, letters or written notes with sexual underpinnings.

4. Other acts analogous to the foregoing.

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[102] A.M. No. 03-03-13-SC, effective January 3, 2005. Section 3, Rule III of CSC Resolution No. 01-0940, otherwise known as the "Administrative Disciplinary Rules on Sexual Harassment Cases," defines the **administrative offense of sexual harassment** as "an act, or a series of acts, involving any unwelcome sexual advance, request or demand for a sexual favor, or other verbal or physical behavior of a sexual nature, committed by a government employee or official in a work-related, training or education related environment of the person complained of." (Emphasis supplied)

(b) The above acts would impair the employee's rights or privileges under existing laws; or

(c) The above acts would result in an intimidating, hostile, or offensive environment for the employee.[103]

Section 53, Rule X of Civil Service Commission (CSC) Resolution No. 01-0940, otherwise known as the "Administrative Disciplinary Rules on Sexual Harassment Cases", classifies sexual harassment into grave, less grave and light offenses, *viz.*:

Section 53. Sexual harassment is classified as grave, less grave and light offenses.

A. Grave Offenses shall include, but are not limited to:

1. unwanted touching of private parts of the body (genitalia, buttocks and breast);

2. sexual assault;

3. malicious touching;

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[103] Section 3 (a), Rule III of CSC Resolution No. 01-0940 provides the modes of commission of the said act as follows:

Section 3. x x x.

(a) Work related sexual harassment is committed under the following circumstances:

(1) **submission to or rejection of the act or series of acts is used as a basis for any employment decision** (including, but not limited to, matters related to hiring, promotion, raise in salary, job security, benefits and any other personnel action) affecting the applicant/ employee; or

(2) the act or series of acts have the purpose or effect of **interfering with the complainant's work performance, or creating an intimidating, hostile or offensive work environment** ; or

(3) the act or series of acts might **reasonably be expected to cause discrimination, insecurity, discomfort, offense or humiliation** to a complainant who may be a co-employee, applicant, customer, or word of the person complained of.

x x x x x x x x x (Emphasis supplied)

4. requesting for sexual favor in exchange for employment, promotion, local or foreign travels, favorable working conditions or assignments, a passing grade, the granting of honors or scholarship, or the grant of benefits or payment of a stipend or allowance, and

5. other analogous cases.

B. Less Grave Offenses shall include, but are not limited to:

1. unwanted touching or brushing against a victim's body;

2. pinching not falling under grave offenses;

3. derogatory or degrading remarks or innuendoes directed toward the members of one sex, or one's sexual orientation or used to describe a person;

4. verbal abuse with sexual overtones; and

5. other analogous cases.

C. The following shall be considered Light Offenses;

1. surreptitiously looking or staring a look of a person's private part or worn undergarments;

2. telling sexist/smutty jokes or sending these through text, electronic mail or other similar means, causing embarrassment or offense and carried out after the offender has been advised that they are offensive or embarrassing or, even without such advise, when they are by their nature clearly embarrassing, offensive or vulgar;

3. malicious leering or ogling;

4. the display of sexually offensive pictures, materials or graffiti;

5. unwelcome inquiries or comments about a person's sex life;

6. unwelcome sexual flirtation, advances, propositions;

7. making offensive hand or body gestures at an employee;

8. persistent unwanted attention with sexual overtones;

9. unwelcome phone calls with sexual overtones causing discomfort, embarrassment, offense or insult to the receiver; and

10. other analogous cases. (Emphases supplied)

Despite his protestations, the charge that Judge Arabani made a drawing of a vagina and a penis, and thereafter showed it to Sheldalyn was corroborated by Mirad, a disinterested witness, who categorically declared that it was Judge Arabani who made the drawing, and affirmed that it was he (Mirad) who crumpled it.[104] The act was enough to create an intimidating, hostile, or offensive environment for Sheldalyn such that all subsequent interaction with Judge Arabani became unwelcome on her part. In fact, the substantial evidence on record showed that Sheldalyn became afraid of Judge Arabani[105] and started to avoid him.[106]

The distasteful act by Judge Arabani of making a drawing of a vagina and a penis, and thereafter showing it to an employee of the court of which he is an officer constitutes sexual harassment. It is an act that constitutes a physical behavior of a sexual nature; a gesture with lewd insinuation. To the Court's mind, Judge Arabani deliberately utilized this form of expression, *i.e.*, drawing, to maliciously convey to Sheldalyn his sexual desires over her; hence, his conduct cannot be classified as a mere display of sexually offensive pictures, materials or graffiti under Section 53 (C) (4), Rule X of CSC Resolution No. 01-0940, such as one who is caught watching or reading pornographic materials. Rather, Judge Arabani's behavior should be classified as an analogous case (Section 53 [B] [5]) of verbal abuse with sexual overtones under Section 53 (B) (4) of the same issuance, which thus, qualifies the same as a less grave offense. Section 56 (B), Rule XI of CSC Resolution No. 01-0940 states the penalties for less grave offenses:

B. For less grave offenses:
1st offense – Fine or suspension of not less than thirty (30) days and not exceeding six (6) months
2nd offense – Dismissal

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[104] See *rollo* (A.M. No. SCC-11-17), p. 349.

[105] See *id.* at 342.

[106] See *id.* at 21.

Accordingly, as it appears that this is Judge Arabani's first infraction of this kind, the Court imposes upon him the penalty of suspension for a period of six (6) months.

WHEREFORE, judgment is hereby rendered as follows:

1. in **A.M. No. SCC-10-14-P**:

a. respondents Rahim A. Arabani (Rahim), Junior Process Server, and Abduraji G. Bakil (Abduraji), Utility Worker I, both of the 4th Shari'a Circuit Court (4th SCC) of Maimbung, Sulu, are found **GUILTY** of committing irregularities in the punching of Rahim's bundy card/ DTR on the subject incidents, and hereby **SUSPENDED** for six (6) months without pay, with a **STERN WARNING** that similar acts would be dealt with more severely;

b. the complaint for insubordination and conduct unbecoming a court employee against Rahim and Abduraji are **DISMISSED** for lack of merit;

c. Rahim and Abduraji are **REPRIMANDED** for failing to comply with Judge Arabani's memorandum requiring them to explain the subject incidents in writing, and **STERNLY WARNED** that a repetition of the same or any similar act shall be dealt with more severely.

2. in **A.M. No. SCC-10-15-P**:

a. respondent Rodrigo Ramos, Jr. (Rodrigo), Clerk of Court of the 4th SCC of Maimbung, Sulu is found **GUILTY** of violation of reasonable office rules and regulations, and is hereby **REPRIMANDED**, and **STERNLY WARNED** that the commission of the same or any similar act shall be dealt with more severely;

b. Rodrigo is declared **GUILTY** of frequent unauthorized absences, and loafing or frequent unauthorized absences from duty during regular office hours, and is accordingly **SUSPENDED** for six (6) months and one (1) day without pay, with a **STERN WARNING** that similar acts would be dealt with more severely. He shall not be entitled to

receive his salary corresponding to the period of his unauthorized leave of absence as afore-discussed, but said absences shall not be deducted from his accumulated leave credits, if any; and

3. in **A.M. No. SCC-11-17**:

a. respondent Judge Arabani, Presiding Judge of the 4th SCC of Maimbung, Sulu, is found **GUILTY** of sexual harassment classified as a less grave offense under Section 53 (B) (5), Rule X of Civil Service Commission Resolution No. 01-0940, and is accordingly **SUSPENDED** for six (6) months without pay, with a **STERN WARNING** that a repetition of the same or any similar act will be dealt with more severely; and

b. the other charges raised in the case are **DISMISSED** for being mere rehash of those already deliberated upon and resolved by the Court in the Resolution dated November 17, 2009 in A.M. No. 06-3-03-SCC, and for being unsubstantiated.

Let copies of this Decision be furnished the Office of the Court Administrator and the Office of the Bar Confidant to be attached to respondents' respective records.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Mendoza, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

Reyes, J., on official leave.

EN BANC

[G.R. No. 173399. February 21, 2017]

CENTRAL BANK BOARD OF LIQUIDATORS, *petitioner, vs.* **BANCO FILIPINO SAVINGS AND MORTGAGE BANK,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; AMENDED AND SUPPLEMENTAL PLEADINGS; THE SECOND AMENDMENT OF THE COMPLAINT WAS IMPROPER FOR IT RAISED NEW CAUSES OF ACTION AND ASSERTED A NEW RELIEF.— The prevailing rule on the amendment of pleadings is one of liberality, with the end of obtaining substantial justice for the parties. However, the option of a party-litigant to amend a pleading is not without limitation. If the purpose is to set up a cause of action not existing at the time of the filing of the complaint, amendment is not allowed. If no right existed at the time the action was commenced, the suit cannot be maintained, even if the right of action may have accrued thereafter. In the instant case, the causes of action subject of the Second Amended/Supplemental Complaint only arose in 1994 – well after those subject of the original Complaint. The original Complaint was based on the alleged illegal closure of Banco Filipino effected in 1985 by the defunct CB and its MB. On the other hand, the Second Amended/Supplemental Complaint stemmed from the alleged oppressive and arbitrary acts committed by the BSP and its MB against Banco Filipino after respondent bank was reopened in 1994. Since the acts or omissions allegedly committed in violation of respondent's rights are different, they constitute separate causes of action. x x x The "acts complained of"' cover not just the conservatorship, receivership, closure, and liquidation of Banco Filipino in 1984 and 1985, but also the alleged acts of harassment committed by the BSP and its MB after respondent bank was reopened in 1994. These acts constituted a whole new cause of action. In effect, respondent raised new causes of action and asserted a new relief in the Second Amended/Supplemental Complaint.

If it is admitted, the RTC would need to look into the propriety of two entirely different causes of action. This is not countenanced by law, as explained in the preceding paragraphs.

2. ID.; ID.; ID.; WHERE THE SUPPLEMENTAL COMPLAINT INVOLVED DIFFERENT ACTS OR OMISSIONS, TRANSACTIONS, AND PARTIES NOT RELATED TO THE CAUSES OF ACTION IN THE ORIGINAL COMPLAINT, SUCH SUPPLEMENTAL COMPLAINT WAS IMPROPER AND SHOULD NOT HAVE BEEN ADMITTED.— [T]he option of a party-litigant to supplement a pleading is not without limitation. A supplemental pleading only serves to bolster or add something to the primary pleading. Its usual function is to set up new facts that justify, enlarge, or change the kind of relief sought with respect to the same subject matter as that of the original complaint. This Court ruled in *Leobrera v. CA* that a supplemental complaint must be founded on the same cause of action as that raised in the original complaint. Although in *Planters Development Bank v. LZK Holdings & Development Corporation*, the Court clarified that the fact that a supplemental pleading technically states a new cause of action should not be a bar to its allowance, still, the matter stated in the supplemental complaint must have a relation to the cause of action set forth in the original pleading. x x x In the instant case, Banco Filipino, through the Second Amended/ Supplemental Complaint, attempted to raise new and different causes of action that arose only in 1994. These causes of action had no relation whatsoever to the causes of action in the original Complaint, as they involved different acts or omissions, transactions, and parties. If the Court admits the Second Amended/Supplemental Complaint under these circumstances, there will be no end to the process of amending the Complaint. x x x For these reasons, whether viewed as an amendment or a supplement to the original Complaint, the Second Amended/ Supplemental Complaint should not have been admitted.

3. ID.; ID.; ID.; THE ASSAILED AMENDED/SUPPLEMENTAL COMPLAINT VIOLATES THE RULES ON JOINDER OF PARTIES AND CAUSES OF ACTIONS.— Banco Filipino is seeking to join the BSP and its MB as parties to the complaint. However, they have different legal personalities from those of the defunct CB and its MB: firstly, because the CB was abolished

by R.A. 7653, and the BSP created in its stead; and secondly, because the members of each MB are natural persons. These factors make the BSP and its MB different from the CB and its MB. Since there are multiple parties involved, the two requirements mentioned in the previous paragraph must be present before the causes of action and parties can be joined. Neither of the two requirements for the joinder of causes of action and parties was met. First, the reliefs for damages prayed for by respondent did not arise from the same transaction or series of transactions. While the damages prayed for in the first Amended/Supplemental Complaint arose from the closure of Banco Filipino by the defunct CB and its MB, the damages prayed for in the Second Amended/Supplemental Complaint arose from the alleged acts of oppression committed by the BSP and its MB against respondent. Second, there is no common question of fact or law between the parties involved. The acts attributed by Banco Filipino to the BSP and its MB pertain to events that transpired after this Court ordered the respondent bank's reopening in 1994. These acts bear no relation to those alleged in the original Complaint, which related to the propriety of the closure and liquidation of respondent as a banking institution way back in 1985.

APPEARANCES OF COUNSEL

Law Firm of Diaz Del Rosario & Associates for petitioner.
Filemon L. Fernandez and *Francisco A. Rivera* for respondent.

D E C I S I O N

SERENO, *C.J.*:

Our ruling in this case is confined to the resolution of procedural issues pertaining to the propriety of the admission of a Second Amended/Supplemental Complaint. The latter sought to hold the Bangko Sentral ng Pilipinas (BSP) and its Monetary Board (MB) liable for causes of action that arose almost 10 years after the original Complaint was filed against the now defunct Central Bank of the Philippines (CB).

THE CASE

The Petition for Review on Certiorari[1] under Rule 45 of the 1997 Revised Rules of Civil Procedure now before us was filed by the Central Bank Board of Liquidators (CB-BOL). It seeks to annul the Decision[2] of the Court of Appeals (CA), which affirmed the Orders[3] of the Regional Trial Court, National Capital Judicial Region, Makati City–Branch 136 (RTC).

The assailed CA Decision affirmed the ruling of the RTC in consolidated Civil Case Nos. 8108, 9675, and 10183, which had admitted the Second Amended/Supplemental Complaint filed by respondent Banco Filipino Savings and Mortgage Bank (Banco Filipino, or respondent).[4] The CB-BOL alleges that by admitting the complaint, the RTC erroneously included the BSP and its MB as new parties to the consolidated civil cases and raised new causes of action not alleged in the original Complaint.[5]

THE FACTS

The following are the pertinent facts of the case as gathered from its records.[6]

On 14 February 1963, the MB of the then CB issued MB Resolution No. 223 allowing respondent Banco Filipino to operate as a savings bank. Respondent began formal operations on 9 July 1964.[7]

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[1] *Rollo*, Vol. I, pp. 3-55.

[2] *Id.* at 63-72; the Court of Appeals Decision dated 27 January 2006 in CA-G.R. SP No. 86697 was penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Fernanda Lampas Peralta and Sesinando E. Villon.

[3] *Id.* at 374-383, 405-408; the Orders dated 27 January 2004 and 20 July 2004 were penned by Judge Rebecca R. Mariano, Presiding Judge of the Regional Trial Court-Branch 136 (Makati City).

[4] *Id.* at 63.

[5] *Id.* at 21.

[6] G.R. No. 70054, 11 December 1991, 204 SCRA 767.

[7] *Rollo*, p. 6.

However, on 27 July 1984, the CB issued MB Resolution No. 955 placing Banco Filipino under conservatorship after granting the latter's loan applications worth billions of pesos.[8] Respondent bank filed with the RTC Makati a Complaint against the CB for the annulment of MB Resolution No. 955.[9] The case was docketed as Civil Case No. 8108 and raffled to Judge Ricardo Francisco of Branch 136.[10]

Thereafter, on 25 January 1985, the CB issued MB Resolution No. 75 ordering the closure of Banco Filipino and placing the latter under receivership. The Resolution stated that since respondent had been found to be insolvent, the latter was forbidden to continue doing business to prevent further losses to its depositors and creditors. The Resolution further provided for the takeover of the assets and liabilities of Banco Filipino for the benefit of its depositors and creditors, as well as for the termination of its conservatorship.[11] On 2 February 1985, Banco Filipino filed a Complaint with the RTC Makati against the MB, assailing the latter's act of placing the bank under receivership.[12] The case was docketed as Civil Case No. 9675 and raffled to Judge Zoilo Aguinaldo of Branch 143.[13]

Because of its impending closure,[14] Banco Filipino filed with the CA a Petition for *Certiorari* and *Mandamus* on 28 February 1985, seeking the annulment of MB Resolution No. 75 on the ground of grave abuse of discretion in the issuance of the Resolution.[15] The Petition eventually reached the Supreme Court, where it was docketed as G.R. No. 70054.

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[8] *Id*.

[9] *Id*. at 64.

[10] Records, Vol. I, p. 1.

[11] *Id*. at 65.

[12] *Id*. at 9.

[13] Records, Vol. IV, p. 1955.

[14] CA *rollo*, p. 246.

[15] *Rollo*, p. 9.

On 22 March 1985, the CB issued another Resolution placing Banco Filipino under liquidation. Respondent then filed another Complaint with the RTC Makati to question the propriety of the liquidation.[16] The case was docketed as Civil Case No. 10183 and raffled to Judge Fernando Agdamag of Branch 138.[17]

Meanwhile, this Court in G.R. No. 70054 promulgated on 29 August 1985 a Resolution directing, among others, the consolidation in Branch 136 of the RTC Makati of the following cases: (1) Civil Case No. 8108, the case for the annulment of the conservatorship order; (2) Civil Case No. 9675, the case seeking to annul the receivership order; and (3) Civil Case No. 10183, the case seeking to annul the order for the liquidation of the bank.[18]

On 11 December 1991, this Court, in an *En Banc* Decision penned by Associate Justice Leo D. Medialdea, nullified MB Resolution No. 75 and ordered the CB and its MB to reorganize the bank and allow it to resume business.[19]

On 6 July 1993, during the pendency of the three consolidated cases, Republic Act (R.A.) No. 7653, or the New Central Bank Act of 1993, took effect. Under the new law, the CB was abolished and, in its stead, the BSP was created. The new law also created the CB-BOL for the purpose of administering and liquidating the CB's assets and liabilities,[20] not all of which had been transferred to the BSP.[21]

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[16] *Id.* at 65.

[17] Records, Vol. VII, p. 2861.

[18] *Rollo*, p. 10.

[19] *Id.* at 65.

[20] R.A. 7653, Sec. 132: *Transfer of Assets and Liabilities*.— Upon the effectivity of this Act, three (3) members of the Monetary Board, which may include the Governor, in representation of the Bangko Sentral, the Secretary of Finance and the Secretary of Budget and Management in representation of the National Government, and the Chairmen of the Committees on Banks of the Senate and the House of Representatives shall determine the assets and liabilities of the Central Bank which may be transferred to or assumed by the Bangko Sentral. The Committee shall

Pursuant to the Decision of this Court in G.R. No. 70054, the BSP reopened Banco Filipino and allowed it to resume business on 1 July 1994.[22]

On 29 May 1995, pursuant to the recent development, Banco Filipino filed a Motion to Admit Attached Amended/ Supplemental Complaint[23] in the three consolidated cases – Civil Case Nos. 8108, 9675, and 10183 – before the RTC. In its Amended/Supplemental Complaint, respondent bank sought to substitute the CB-BOL for the defunct CB and its MB. Respondent also aimed to recover at least ₱18 billion in actual damages, litigation expenses, attorney's fees, interests, and costs of suit against petitioner and individuals who had allegedly acted with malice and evident bad faith in placing the bank under conservatorship and eventually closing it down in 1985.[24]

The trial court, through an Order dated 29 March 1996, granted the Motion to Admit filed by Banco Filipino and accordingly admitted the latter's Amended/Supplemental Complaint. Consequently, the CB-BOL was substituted for the defunct CB in respondent's civil cases, which are still pending with the RTC.[25]

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complete its work within ninety (90) days from the constitution of the Monetary Board submitting a comprehensive report with all its findings and justification.

x x x x x x x x x

(e) any asset or liability of the Central Bank not transferred to the *Bangko Sentral* shall be retained and administered, disposed of and liquidated by the Central Bank itself which shall continue to exist as the CB Board of Liquidators only for the purposes provided in this paragraph but not later than twenty-five (25) years or until such time that liabilities have been liquidated: *Provided*, That the *Bangko Sentral* may financially assist the Central Bank Board of Liquidators in the liquidation of CB liabilities: *Provided, finally*, That upon disposition of said retained assets and liquidation of said retained liabilities, the Central Bank shall be deemed abolished.

[21] *Rollo*, p.14.

[22] *Id*.

[23] *Id*. at 75-211.

[24] *Id*.

[25] *Id*. at 15.

On 25 September 2003, or more than 10 years from the enactment of R.A. 7653, Banco Filipino again filed a Motion to Admit Second Amended/Supplemental Complaint[26] in the consolidated civil cases before the RTC. In that Second Amended/ Supplemental Complaint,[27] respondent sought to include the BSP and its MB – "the purported successor-in-interest of the old CB"[28] – as additional defendants based on the latter's alleged acts or omissions as follows:

1. The BSP and the MB refused to grant Banco Filipino a universal banking license, unless it complied with their stringent conditions intended to further deplete its resources, contrary to the provisions of the Memorandum of Agreement the parties entered into on 20 December 1999.[29]
2. The BSP and the MB engaged in a smear campaign against Banco Filipino intended to undermine the trust and confidence of its depositors and the public in general.[30]
3. With the objective of gaining control of respondent bank, the BSP disqualified a member of the former's board of directors.[31]
4. The BSP and its MB conspired with a group of minority stockholders of Banco Filipino to institute a case against respondent and thereby place it under a state of receivership or conservatorship or under a management committee.[32]
5. The demands of Banco Filipino for an out-of-court settlement of its damage claims against the BSP have gone unheeded and have resulted in burgeoning litigation expenses and other damages, for which respondent continues to suffer as a result of prolonged litigation.[33]

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[26] *Id*. at 213-216.

[27] *Id*. at 219-356.

[28] *Id*. at 16.

[29] *Id*. at 348.

[30] *Id.* at 349.

[31] *Id*. at 350.

[32] *Id*. at 351.

[33] *Id.* at 352.

Banco Filipino claimed that the BSP employed "coercive measures"[34] that forced respondent to enter into a Memorandum of Agreement (MOA) regarding the collection of advances extended to the latter by the defunct CB. In addition, respondent also alleged that its present dealings with the BSP and the MB have become increasingly difficult, especially in obtaining favorable actions on its requests and other official dealings.[35]

Banco Filipino's Motion to Admit its Second Amended/ Supplemental Complaint was opposed by the CB-BOL based on the following grounds:

1. Banco Filipino's Second Amended/Supplemental Complaint was not supported by a board resolution that authorized it to file the amended or supplemental complaint.
2. The second supplemental complaint raised new and independent causes of action against a new party – the BSP – which was not an original party.
3. The second supplemental complaint was violative of the rule on the joinder of causes of action, because it alleged those that did not arise from the same contract, transaction or relation between the parties – as opposed to those alleged in the complaint sought to be amended or supplemented – and differed from the causes of action cited in the original Complaint.
4. The admission of the second supplemental complaint would expand the scope of the dispute in the consolidated civil cases to include new causes of action against new parties like the BSP, resulting in a delay in the resolution of the cases.[36]

On 27 January 2004, the RTC, through an Order penned by Presiding Judge Rebecca R. Mariano, granted the Motion to Admit Banco Filipino's Second Amended/Supplemental Complaint.[37] The CB-BOL moved for the reconsideration of

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[34] *Id*. at 16.

[35] *Id*.

[36] *Id*. at 17-18.

[37] *Id*. at 374-383.

the trial court's Order,[38] but the motion was denied in an Order dated 20 July 2004.[39]

On 1 October 2004, petitioner CB-BOL filed with the CA a Petition for *Certiorari* under Rule 65, docketed as CA-G.R. SP No. 86697.[40] It questioned the propriety of the RTC's Order admitting Banco Filipino's Second Amended/Supplemental Complaint and committing grave abuse of discretion in the process. Reiterating the grounds stated in its Opposition to the Motion to Admit the Second Amended/Supplemental Complaint, petitioner contended that the complaint consisted of, among others, an improper joinder of parties and other issues that were entirely different from those raised in the original complaint.[41]

On 27 January 2006, the CA dismissed the CB-BOL's Petition and affirmed *in toto* the trial court's Order admitting the Second Amended/Supplemental Complaint.[42]

The appellate court ruled that the old CB continued to exist and remained a defendant in the consolidated civil cases, *albeit* under a new name: CB-BOL.

It also ruled that, pursuant to R.A. 7653, the BSP was the successor-in-interest of the old CB. Further, with the transfer of assets from the CB to the BSP during the pendency of the subject civil cases, the latter now became a transferee *pendente lite*. Therefore, the CA concluded that there were no new parties impleaded in the civil cases when the Second Amended/ Supplemental Complaint was admitted by the trial court.[43]

The CA further sustained the RTC's ruling that respondent Banco Filipino did not raise new issues against petitioner CB-

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[38] *Id.* at 384-404.

[39] *Id*. at 405-408.

[40] *Id.* at 409-449.

[41] *Id*. at 415-419.

[42] *Id*. at 63-72.

[43] *Id*. at 70.

BOL or seek new reliefs or claim new damages from the latter. Supposedly, respondent merely sought the addition of the BSP and its MB as parties-defendants in the consolidated civil case, as they were the successors-in-interest of the defunct CB and its MB.[44]

The assailed CA Decision also attributed to the CB-BOL the apparent delay in the resolution of the current dispute, based on the number of *certiorari* cases the latter had filed with the CA and the Supreme Court since the commencement of those cases.[45]

On 16 February 2006, petitioner filed a Motion for Reconsideration seeking the reversal of the Decision dated 27 January 2006 in CA-G.R. SP No. 86697.[46] On 27 June 2006, the CA denied the Motion after finding no "plausible reason" to depart from its assailed Decision.[47]

Petitioner CB-BOL now comes to this Court via a Petition for Review on *Certiorari*. It assails the Decision of the appellate court in CA-G.R. SP No. 86697, which affirmed *in toto* the trial court's Order admitting the Second Amended/Supplemental Complaint of Banco Filipino. Specifically, petitioner raises the following arguments:[48]

I.

THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S ORDER ADMITTING RESPONDENT'S SECOND AMENDED/SUPPLEMENTAL COMPLAINT AGAINST THE BSP, DESPITE THE FACT THAT THE PARTIES, SUBJECT MATTER AND CAUSES OF ACTION ASSERTED THEREIN ARE DIFFERENT FROM AND TOTALLY UNRELATED TO RESPONDENT'S CAUSES OF ACTION UNDER THE FIRST

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[44] *Id.* at 71.

[45] *Id.* at 72.

[46] *Id.* at 501-549.

[47] *Id.* at 74.

[48] *Id.* at 21-24.

AMENDED SUPPLEMENTAL COMPLAINT AGAINST THE DEFUNCT CB.

x x x x x x x x x

II.

THE COURT OF APPEALS ERRED IN REDUCING THE ADMISSION OF THE SECOND AMENDED/SUPPLEMENTAL COMPLAINT TO THE MERE AMENDMENT OF A PLEADING "TO SUBSTITUTE OR JOIN A TRANSFEREE *PENDENTE LITE*" UNDER SEC. 19, RULE 3 OF THE REVISED RULES OF COURT x x x.

x x x x x x x x x

III.

THE COURT OF APPEALS ERRED IN UPHOLDING THE TRIAL COURT'S RULING THAT THE OLD CB CONTINUES TO EXIST AS PETITIONER CB-BOL. PETITIONER IS A SEPARATE, DISTINCT AND INDEPENDENT ENTITY FROM THE DEFUNCT CB WHICH HAS BEEN ABOLISHED UPON THE ENACTMENT OF THE NEW CENTRAL BANK ACT.

IV.

PETITIONER'S PLEA AGAINST THE ADMISSION OF RESPONDENT'S SECOND AMENDED/SUPPLEMENTAL COMPLAINT IS NOT A DILATORY TACTIC OR A MERE RESORT TO TECHNICALITY; RATHER, IT IS AN EARNEST APPEAL FOR PETITIONER TO BE FREE FROM A USELESS AND WASTEFUL LEGAL CONTEST WHICH SHOULD BE THE SUBJECT OF A SEPARATE CASE SOLELY BETWEEN THE RESPONDENT AND THE BSP. IT IS A PLEA BY PETITIONER TO SECURE A JUST, SPEEDY AND INEXPENSIVE DETERMINATION OF RESPONDENT'S CASE AGAINST IT FOR ACTS SUPPOSEDLY PERPETRATED BY THE OLD CB IN 1984-1985 FOR WHICH IT IS SUPPOSEDLY THE SUCCESSOR-IN-INTEREST.

THE ISSUE

The crucial issue to be resolved here is whether the RTC erred in admitting Banco Filipino's Second Amended/Supplemental Complaint in the consolidated civil cases before it.

OUR RULING

The Petition of the CB-BOL is impressed with merit.

It must be noted at this point that the BSP and its MB are not yet required to answer the RTC Complaint, as the issue of their addition as parties is yet to be settled. Nevertheless, whether or not the BSP and its MB are transferees or successors-in-interest of the CB and its MB, the former's addition or substitution as parties to this case must comply with the correct procedure and form prescribed by law.

The second amendment of the Complaint was improper.

Rule 10 of the 1997 Revised Rules of Court allows the parties to amend their pleadings (a) by adding or striking out an allegation or a party's name; or (b) by correcting a mistake in the name of a party or rectifying a mistaken or an inadequate allegation or description in the pleadings for the purpose of determining the actual merits of the controversy in the most inexpensive and expeditious manner.[49]

The prevailing rule on the amendment of pleadings is one of liberality,[50] with the end of obtaining substantial justice for the parties. However, the option of a party-litigant to amend a pleading is not without limitation. If the purpose is to set up a cause of action not existing at the time of the filing of the complaint, amendment is not allowed. If no right existed at the time the action was commenced, the suit cannot be maintained, even if the right of action may have accrued thereafter.[51]

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[49] 1997 RULES OF COURT, Rule 10, SECTION 1. *Amendments in general*. – Pleadings may be amended by adding or striking out an allegation or the name of any party, or by correcting a mistake in the name of a party or a mistaken or inadequate allegation or description in any other respect, so that the actual merits of the controversy may speedily be determined, without regard to technicalities, and in the most expeditious and inexpensive manner.

[50] *Tiu v. Philippine Bank of Communications,* G.R. No. 151932, 19 August 2009, 596 SCRA 432.

[51] OSCAR M. HERRERA, *REMEDIAL LAW,* Vol. I, 833-834 (2007), citing *Limpangco v. Mercado*, 10 Phil. 508 (1908).

In the instant case, the causes of action subject of the Second Amended/Supplemental Complaint only arose in 1994 – well after those subject of the original Complaint. The original Complaint was based on the alleged illegal closure of Banco Filipino effected in 1985 by the defunct CB and its MB.

On the other hand, the Second Amended/Supplemental Complaint stemmed from the alleged oppressive and arbitrary acts committed by the BSP and its MB against Banco Filipino after respondent bank was reopened in 1994. Since the acts or omissions allegedly committed in violation of respondent's rights are different, they constitute separate causes of action.[52]

In its Comment[53] on the present Petition, Banco Filipino contends, as the RTC and the CA similarly ruled, that the Second Amended/Supplemental Complaint does not alter the substance of the original demand, change the cause of action against the original defendants, or seek additional or new reliefs.[54] Rather, respondent contends that the only change sought is the addition of the BSP and its MB as parties-defendants. Respondent further argues that what petitioner erroneously views as new causes of action are merely demonstrations to show that the BSP has come to adopt the same repressive and oppressive attitude of the latter's alleged predecessor-in-interest.[55]

This contention is, however, belied by a closer examination of the Second Amended/Supplemental Complaint, in which respondent asks the Court to order the defendants to pay, among others, actual damages of at least ₱18.8 billion "as a consequence of the acts herein complained of."[56]

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[52] *Id*.; Rules of Court, Rule 2: Section 2. *Cause of action*, *defined*.— A cause of action is the act or omission by which a party violates a right of another.

Section 3. *One suit for a single cause of action*. — A party may not institute more than one suit for a single cause of action.

[53] *Rollo*, pp. 601-636.

[54] *Id.* at 617.

[55] *Id.* at 633.

[56] *Id*. at 352.

The "acts complained of" cover not just the conservatorship, receivership, closure, and liquidation of Banco Filipino in 1984 and 1985, but also the alleged acts of harassment committed by the BSP and its MB after respondent bank was reopened in 1994. These acts constituted a whole new cause of action. In effect, respondent raised new causes of action and asserted a new relief in the Second Amended/Supplemental Complaint. If it is admitted, the RTC would need to look into the propriety of two entirely different causes of action. This is not countenanced by law, as explained in the preceding paragraphs.

The second supplemental pleading was improper.

Rule 10 of the 1997 Revised Rules of Court allows the parties to supplement their pleadings by setting forth transactions, occurrences, or events that happened since the date of the pleading sought to be supplemented.[57]

However, the option of a party-litigant to supplement a pleading is not without limitation. A supplemental pleading only serves to bolster or add something to the primary pleading. Its usual function is to set up new facts that justify, enlarge, or change the kind of relief sought with respect to the same subject matter as that of the original complaint.[58]

This Court ruled in *Leobrera v. CA*[59] that a supplemental complaint must be founded on the same cause of action as that raised in the original complaint. Although in *Planters Development Bank v. LZK Holdings & Development Corporation,*[60] the Court clarified that the fact that a supplemental pleading technically states a new cause of action should not be a bar to its allowance, still, the matter stated in the supplemental

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[57] Rule 10, SECTION 6.

[58] *Planters Development Bank v. LZK Holdings & Development Corp.,* 496 Phil. 263 (2005).

[59] G.R. No. 80001, 27 February 1989, 170 SCRA 711.

[60] *Supra* note 58, citing *Smith v. Biggs Boiler Works Co.,* 34 ALR 2d. 1125 (1952).

complaint must have a relation to the cause of action set forth in the original pleading. That is, the matter must be germane and intertwined with the cause of action stated in the original complaint so that the principal and core issues raised by the parties in their original pleadings remain the same.[61]

In the instant case, Banco Filipino, through the Second Amended/Supplemental Complaint, attempted to raise new and different causes of action that arose only in 1994. These causes of action had no relation whatsoever to the causes of action in the original Complaint, as they involved different acts or omissions, transactions, and parties. If the Court admits the Second Amended/Supplemental Complaint under these circumstances, there will be no end to the process of amending the Complaint. What indeed would prevent respondent from seeking further amendments by alleging acts that may be committed in the future?

For these reasons, whether viewed as an amendment or a supplement to the original Complaint, the Second Amended/ Supplemental Complaint should not have been admitted.

The amendment/supplement violates the rules on joinder of parties and causes of action.

Moreover, the admission of the Second Amended/ Supplemental Complaint is inappropriate because it violates the rule on joinder of parties and causes of action. If its admission is upheld, the causes of action set forth therein would be joined with those in the original Complaint. The joinder of causes of action is indeed allowed under Section 5, Rule 2 of the 1997 Rules of Court;[62] but if there are multiple parties, the joinder

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[61] *Id.*

[62] 1997 RULES OF COURT: Rule 2, Section 5. *Joinder of causes of action*. — A party may in one pleading assert, in the alternative or otherwise, as many causes of action as he may have against an opposing party, subject to the following conditions:

(a) The party joining the causes of action shall comply with the rules on joinder of parties;

is made subject to the rules on joinder of parties under Section 6, Rule 3.[63] Specifically, before causes of action and parties can be joined in a complaint involving multiple parties, (1) the right to relief must arise out of the same transaction or series of transactions and (2) there must be a question of law or fact common to all the parties.[64]

In the instant case, Banco Filipino is seeking to join the BSP and its MB as parties to the complaint. However, they have different legal personalities from those of the defunct CB and its MB: firstly, because the CB was abolished by R.A. 7653, and the BSP created in its stead; and secondly, because the members of each MB are natural persons. These factors make the BSP and its MB different from the CB and its MB. Since there are multiple parties involved, the two requirements mentioned in the previous paragraph must be present before the causes of action and parties can be joined. Neither of the two requirements for the joinder of causes of action and parties was met.

(b) The joinder shall not include special civil actions or actions governed by special rules;
(c) Where the causes of action are between the same parties but pertain to different venues or jurisdictions, the joinder may be allowed in the Regional Trial Court provided one of the causes of action falls within the jurisdiction of said court and the venue lies therein; and
(d) Where the claims in all the causes of action are principally for recovery of money, the aggregate amount claimed shall be the test of jurisdiction.

[63] *Id*., Rule 3, Section 6. *Permissive joinder of parties*. — All persons in whom or against whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, may, except as otherwise provided in these Rules, join as plaintiffs or be joined as defendants in one complaint, where any question of law or fact common to all such plaintiffs or to all such defendants may arise in the action; but the court may make such orders as may be just to prevent any plaintiff or defendant from being embarrassed or put to expense in connection with any proceedings in which he may have no interest.

[64] *Pantranco North Express, Inc. v. Standard Insurance Co., Inc.,* 493 Phil. 616 (2005).

First, the reliefs for damages prayed for by respondent did not arise from the same transaction or series of transactions. While the damages prayed for in the first Amended/Supplemental Complaint arose from the closure of Banco Filipino by the defunct CB and its MB, the damages prayed for in the Second Amended/ Supplemental Complaint arose from the alleged acts of oppression committed by the BSP and its MB against respondent.

Second, there is no common question of fact or law between the parties involved. The acts attributed by Banco Filipino to the BSP and its MB pertain to events that transpired after this Court ordered the respondent bank's reopening in 1994. These acts bear no relation to those alleged in the original Complaint, which related to the propriety of the closure and liquidation of respondent as a banking institution way back in 1985.

The only common factor in all these allegations is respondent bank itself as the alleged aggrieved party. Since the BSP and its MB cannot be joined as parties, then neither can the causes of action against them be joined.

This ruling is confined to procedural issues.

As mentioned at the outset, the Court will confine its ruling on this Petition to procedural issues pertaining to the propriety of the admission of the Second Amended/Supplemental Complaint. We will not address the issues raised by petitioner with regard the findings of the trial and the appellate court that the BSP is the successor-in-interest of the defunct CB[65] and is considered a transferee *pendente lite*[66] in the civil cases. These findings relate to the BSP's potential liability for the causes of action alleged in the original Complaint. At issue here is Banco Filipino's attempt, through the Second Amended/Supplemental Complaint, to hold the BSP and its MB liable for causes of action that arose in 1994. Respondent is not without any relief.

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[65] *Rollo*, Vol. 1, pp. 380-381.

[66] *Id*.

If the RTC finds that the BSP was indeed a transferee *pendente lite*, the failure to implead it would not prevent the trial court from holding the BSP liable, should liability now attach for acts alleged in the original Complaint.[67]

WHEREFORE, the Petition of the CB-BOL is **GRANTED**, and the Decision of the Court of Appeals dated 27 January 2006 and Resolution dated 27 June 2006 in **CA-G.R. SP No. 86697** are hereby **REVERSED** and **SET ASIDE**.

The RTC National Capital Judicial Region, Makati City, Branch 136 is hereby **DIRECTED** to proceed with the trial of this case with utmost dispatch.

SO ORDERED.

Velasco, Jr., Leonardo-de Castro, Bersamin, del Castillo, Mendoza, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

Carpio and *Peralta, JJ.,* no part.

Reyes, J., on official leave.

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[67] A transferee stands exactly in the shoes of his predecessor-in-interest, bound by the proceedings and judgment in the case before the rights were assigned to him. xxx Essentially, the law already considers the transferee joined or substituted in the pending action, commencing at the exact moment when the transfer of interest is perfected between the original party-transferor *and the transferee pendente lite.* (*Natalia Realty, Inc. v. Court of Appeals,* 440 Phil. 1 ([2000]).

EN BANC

[G.R. No. 193092. February 21, 2017]

DENNIS M. VILLA-IGNACIO, *petitioner, vs.* **OMBUDSMAN MERCEDITAS N. GUTIERREZ, THE INTERNAL AFFAIRS BOARD OF THE OFFICE OF THE OMBUDSMAN, represented by its Chairman, ORLANDO C. CASIMIRO, ELVIRA C. CHUA, and the SANDIGANBAYAN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; ADMINISTRATIVE ORDER NO. 16 (CREATION OF AN INTERNAL AFFAIRS BOARD); THERE WAS VIOLATION OF THE PROCEDURE ON DISQUALIFICATION OF AN OFFICIAL FROM ACTING ON A COMPLAINT OR PARTICIPATING IN A PROCEEDING WHEN RESPONDENT CONTINUED TO HANDLE THE PROCEEDINGS AGAINST PETITIONER.— Administrative Order No. (A.O.) 16, Series of 2003, entitled "Creation of an Internal Affairs Board," outlines the procedure for handling complaints against officials and employees of the Office of the Ombudsman. In arguing for the disqualification of Casimiro, petitioner invokes Section III(N) of A.O. 16, which reads: N. Disqualifications The Chairman, Vice Chairman or any member of the IAB, as well as any member of the IAB Investigating Staff, shall be automatically disqualified from acting on a complaint or participating in a proceeding under the following circumstances: x x x **2. He belongs to the same component unit as any of the parties to the case; 3. He belongs or belonged to the same component unit as any of the parties to the case during the period when the act complained of transpired; x x x** In this case, there is no dispute that Chua reports to the Central Office, which is the same as the unit of Casimiro. Straightforwardly, the latter should have been disqualified from acting on her complaint against petitioner. Despite the protest of petitioner at the very onset of the case, Casimiro continued to handle the proceedings against the former.

2. ID.; ID.; ID.; ID.; THE AMENDMENT TO THE PROCEDURE ACQUIRED A QUESTIONABLE CHARACTER AS IT WAS SOUGHT TO BE IMPLEMENTED SUBSEQUENT TO THE BREACH BY THE OFFICE OF THE OMBUDSMAN'S INTERNAL AFFAIRS BOARD (IAB) OF ITS OWN RULES.— As can be read in paragraphs 2 and 3, Section III(N) of A.O. 16 patently disqualifies a person who belongs to the same component unit as any of the parties to the case, regardless of the timeframe that the acts complained of transpired. Clearly, the operative ground for disqualification arises when a member of the investigating and adjudicatory body is connected to the same unit as that of any of the parties to the case. Now, before this Court, the Office of the Ombudsman points out that during the pendency of the proceedings before the IAB, A.O. 21 entitled "Revised Rules of the Internal Affairs Board" amended A.O. 16. A.O. 21 deleted paragraphs 2 and 3 of Section III(N), thereby removing the disqualification of IAB members belonging to the same component unit as any of the parties to the cases before them. This amendment acquired a questionable character, as it was sought to be implemented *subsequent* to the breach by the IAB of its own rules. In our view, the supervening revision of A.O. 16 contravenes the avowed policy of the Office of the Ombudsman to "adopt and promulgate stringent rules that shall ensure fairness, impartiality, propriety and integrity in all its actions." Changing regulations in the middle of the proceedings without reason, after the violation has accrued, does not comply with fundamental fairness, or in other words, due process of law.

3. ID.; ID.; ID.; ADMINISTRATIVE ORDER NO. 7; VIOLATION THEREOF WAS COMMITTED WHEN PUBLIC RESPONDENTS UTILIZED AN UNVERIFIED AND UNIDENTIFIED PRIVATE DOCUMENT AS EVIDENCE IN ITS PROCEEDING AGAINST PETITIONER.— According to Section 4, Rule II of A.O. 7 entitled "Rules of Procedure of the Office of the Ombudsman," supporting witnesses must execute affidavits to substantiate a complaint against a person under preliminary investigation. Affidavits are voluntary declarations of fact written down and sworn to by the declarant before an officer authorized to administer oaths. Here, the IAB concluded that a "majority of the OSP officers and employees disclaimed that they had knowledge of and

consented to the turning-over of their donations to Gawad Kalinga Foundation." As its basis, public respondent relied upon the Manifestation dated 4 September 2008 signed by 28 officials and employees of the OSP. That Manifestation, which purports to be the voice of the majority belying the donation to Gawad Kalinga, does not qualify as an affidavit as it was not sworn to by the declarants before an officer authorized to administer oaths. Therefore, based on A.O. 7, public respondents should not have considered an unverified and 2 unidentified private document as evidence in its proceeding against petitioner.

APPEARANCES OF COUNSEL

Pablito V. Sanidad, et al. for petitioner.
The Solicitor General for respondents.

D E C I S I O N

SERENO, *C.J.*:

At bench is a special civil action for certiorari[1] filed by Dennis M. Villa-Ignacio, the former head of the Office of the Special Prosecutor (OSP) of the Office of the Ombudsman. He assails the Resolution[2] and Joint Order[3] of the Office of the Ombudsman's Internal Affairs Board (IAB). These issuances

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[1] *Rollo*, pp. 3-54; Petition for *Certiorari* with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction filed on 17 August 2010.

[2] *Id*. at 56-81; the IAB Resolution in OMB-C-C-08-0132-D dated 4 February 2010 was signed by Chairman Orlando C. Casimiro, Vice-Chairman Emilio A. Gonzalez III, and IAB members Robert E. Kallos, Evelyn A. Baliton, Rodolfo M. Elman, and Virginia P. Santiago; approved by Ombudsman Ma. Merceditas Navarro-Gutierrez on 23 April 2010.

[3] *Id*. at 83-91; the IAB Joint Order in OMB-C-C-08-0132-D and OMB-C-A-08-0147-D dated 4 June 2010 was signed by Chairman Orlando C. Casimiro, Vice-Chairman Emilio A. Gonzalez III, and IAB members Robert E. Kallos, Evelyn A. Baliton, Rodolfo M. Elman, and Virginia P. Santiago; approved by Ombudsman Ma. Merceditas Navarro-Gutierrez on 16 June 2010.

were approved by the Ombudsman,[4] resulting in the filing of an Information for *estafa* against petitioner before the Sandiganbayan.

FACTUAL ANTECEDENTS

In January 2005, during a flag ceremony, petitioner asked the employees of the OSP what to do with the monetary contributions solicited in their December 2004 Christmas party charity drive. Earlier, they had given their donations in kind to the Kapuso Foundation of GMA 7 Network.

The employees agreed that the monetary proceeds of their project would be donated to the typhoon victims in Quezon province, specifically for the construction of manual deep wells. Immediately after the flag ceremony, private respondent Assistant Special Prosecutor Elvira C. Chua donated ₱26,660 to the charity drive. Erlina C. Bernabe, who pooled the funds, issued a receipt[5] in the name of Chua, stating that the donation was for the purchase of water pumps.

According to petitioner, he told the OSP employees in the succeeding flag assemblies that the contractor of the deep wells had declined the project. After soliciting suggestions on the use of the funds they had raised, he proposed that these be donated to the Gawad Kalinga Community Development Foundation, Inc. (Gawad Kalinga). He claimed that the employees participated in the discussion and eventually agreed to donate the funds to Gawad Kalinga.

On 1 September 2006, petitioner instructed Bernabe to apply for a manager's check amounting to ₱52,000, payable to Gawad Kalinga.[6] The beneficiary issued an Official Receipt,[7] which was posted on the bulletin board of the OSP for the information of all of its employees.

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[4] *Id*. at 79, 91; the Resolution and Joint Order of the IAB were respectively approved on 23 April 2010 and 16 June 2010.

[5] *Id*. at 148.

[6] *Id*. at 151.

[7] *Id*. at 152.

Two years after the charity drive, Chua contested the donation to Gawad Kalinga. In a letter dated 18 March 2008,[8] she wrote Bernabe asking about the ₱26,660 donation. Bernabe replied that, as instructed by petitioner, the funds donated by private respondent had already been included in the OSP employees' donation to Gawad Kalinga.[9]

PROCEEDINGS BEFORE THE IAB

Claiming that petitioner and Bernabe had committed *estafa* when they gave her ₱26,660 to an entirely different beneficiary, Chua lodged a Complaint[10] against them before the IAB on 27 March 2008. The IAB, then chaired by Overall Deputy Ombudsman Orlando C. Casimiro, is the body that investigates the officials and personnel of the Office of the Ombudsman.

In her defense, Bernabe claimed that she never exercised any kind of authority or discretion over the funds, and that her actions were done only in compliance with the directives of petitioner, who was her superior. Furthermore, she averred that Chua had made a donation to the OSP, and not to Bernabe or petitioner. Bernabe highlighted the fact that the donation had not been received in trust or under any obligation to deliver it. She further asserted that even if the donor had violated the condition of the donation, the remedy was to institute a civil case for the revocation of the donation, and not to institute a criminal case for *estafa*.

For his part, petitioner consistently questioned the proceedings of the IAB before Casimiro. He claimed that under the IAB's own rules, Casimiro should be disqualified from the proceedings because both the latter and Chua belonged to the same unit – the Office of the Ombudsman's Central Office. Petitioner maintained that the Complaint of private respondent was motivated by a vendetta against him. He insisted that he had not converted Chua's contribution to an unintended purpose.

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[8] *Id*. at 147.

[9] *Id*. at 149; letter signed by Bernabe dated 18 March 2008.

[10] *Id*. at 134-145.

He also pointed out that during the flag assemblies, the employees had agreed with his suggestion to donate to Gawad Kalinga.

On the basis of a Manifestation dated 4 September 2008 and signed by 28 officials of the OSP, Chua claimed that the majority of them had not agreed to donate the funds to Gawad Kalinga.[11] She also disclaimed any involvement in the discussions related to the donation of her monetary contribution.

In its Resolution dated 4 February 2010, which was affirmed in its Joint Order dated 4 June 2010, the IAB believed Bernabe and resolved to dismiss the Complaint against her. It held that she had merely acted at the behest of petitioner.

With respect to petitioner, the IAB recommended the filing before the Sandiganbayan of an Information for *estafa* with abuse of confidence under Article 315 (1) (b) of the Revised Penal Code. The IAB ruled that petitioner had misappropriated the funds of the charity drive by giving the money to Gawad Kalinga, instead of using it to construct deep wells for the typhoon victims.

Without explanation, Ombudsman Merceditas N. Gutierrez approved the recommendation of the IAB. As a result, an Information for *estafa*, docketed as Criminal Case Number SB-10-CRM-0110, was filed against petitioner before the Sandiganbayan.[12]

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the instant Petition for Certiorari under Rule 65 of the Rules of Court against the IAB's recommendation, which was affirmed by the Ombudsman.

In our Resolution dated 11 January 2011, we noted and granted the Manifestation and Manifestation in Lieu of Comment dated 21 December 2010 filed by the Office of the Solicitor General (OSG). The OSG manifested that the IAB and Ombudsman

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[11] *Id*. at 268-270.

[12] *Id*. at 389-391.

Ma. Merceditas N. Gutierrez had gravely abused their discretion in allowing Casimiro to actively participate in the proceedings *a quo*. Thus, the Office of the Ombudsman through its own counsel filed its comment on the present action.[13] Respondents stood by the validity of the indictment against petitioner.[14]

On 23 October 2012, this Court required the parties to move in the premises.[15] On 18 March 2013, petitioner manifested that the Court of Appeals (CA) Decision dated 8 October 2012 had already absolved him in a related administrative case finding him liable for simple misconduct.[16] However, neither of the parties indicated whether that CA Decision has already attained finality. Private respondent Chua manifested that the Special Second Division of the Sandiganbayan had deferred the proceedings against petitioner for *estafa* in SB-10-CRM-0110 until the resolution of the instant case by this Court.[17] For its part, the Office of the Ombudsman manifested that there was no relevant supervening development that might cause the present case to become moot and academic.

In this special civil action for certiorari, petitioner claims that respondents gravely abused their discretion by violating their own rules of procedure when they charged him with *estafa*.

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[13] *Id*. at 451-469; 475-476. In the Resolution of this Court dated 11 January 2011, we noted and granted the Manifestation and Manifestation in Lieu of Comment dated 21 December 2010 filed by the Office of the Solicitor General (OSG). The OSG manifests that the IAB and Ombudsman Ma. Merceditas N. Gutierrez had gravely abused their discretion in the proceedings *a quo*. For this reason, public respondents filed their own comment in the present action.

[14] *Id*. at 399-423, 550-590; Comment of Elvira C. Chua filed on 21 October 2010 and Comment of the Office of the Ombudsman filed on 10 March 2011.

[15] *Id*. at 697.

[16] *Id*. at 836-956; the CA Decision dated 8 October 2012 in CA-G.R. SP No. 114702 was penned by Associate Justice Noel G. Tijam, with Associate Justices Romeo F. Barza and Ramon A. Cruz, concurring.

[17] Sandiganbayan records, p. 217.

RULING OF THE COURT

We grant the petition. Respondents committed grave abuse of discretion when they failed to observe their own rules in the conduct of their proceedings against petitioner.

Violation of Administrative Order No. 16

Administrative Order No. (A.O.) 16, Series of 2003, entitled "Creation of an Internal Affairs Board," outlines the procedure for handling complaints against officials and employees of the Office of the Ombudsman. In arguing for the disqualification of Casimiro, petitioner invokes Section III(N) of A.O. 16, which reads:

> N. Disqualifications
>
> The Chairman, Vice Chairman or any member of the IAB, as well as any member of the IAB Investigating Staff, shall be automatically disqualified from acting on a complaint or participating in a proceeding under the following circumstances:
>
> 1. He is a party to the complaint, either as a respondent or complainant;
>
> **2. He belongs to the same component unit as any of the parties to the case;**
>
> **3. He belongs or belonged to the same component unit as any of the parties to the case during the period when the act complained of transpired;**
>
> 4. He is pecuniarily interested in the case or is related to any of the parties within the sixth degree of affinity or consanguinity, or to counsel within the fourth degree, computed according to the provisions of civil law; or
>
> 5. He has, at one time or another, acted upon the matter subject of the complaint or proceeding. x x x (Emphases supplied)

In this case, there is no dispute that Chua reports to the Central Office, which is the same as the unit of Casimiro.[18]

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[18] CA *rollo,* pp. 171-172; Detail of Personnel to OMB-Central Office dated 10 August 2006 and Office Order No. 0138 dated 28 December 2006.

Straightforwardly, the latter should have been disqualified from acting on her complaint against petitioner.

Despite the protest of petitioner at the very onset of the case,[19] Casimiro continued to handle the proceedings against the former. Casimiro signed several Orders requiring the submission of counter-affidavits, supporting evidence,[20] position papers,[21] and rejoinders;[22] and eventually issued the assailed resolutions. The IAB did not rule on the objection of petitioner until it had already concluded the proceedings against him.

The IAB ventured to justify the inclusion of Casimiro only when it issued its assailed Resolution dated 4 February 2010. It ruled that A.O. 16 did not apply, since the questioned charity drive transpired prior to the assignment of Chua to the Central Office in 2006.[23]

The appreciation of the IAB is utterly incorrect. As can be read in paragraphs 2 and 3, Section III(N) of A.O. 16 patently disqualifies a person who belongs to the same component unit as any of the parties to the case, regardless of the timeframe that the acts complained of transpired. Clearly, the operative ground for disqualification arises when a member of the investigating and adjudicatory body is connected to the same unit as that of any of the parties to the case.

Now, before this Court, the Office of the Ombudsman points out that during the pendency of the proceedings before the IAB, A.O. 21 entitled "Revised Rules of the Internal Affairs Board" amended A.O. 16.[24] A.O. 21 deleted paragraphs 2 and 3 of Section III(N), thereby removing the disqualification of IAB members

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[19] *Id*. at 82-148; Counter-Affidavit *Ex Abudanti Ad Cautelam* with Reply of petitioner dated 26 August 2008.

[20] *Rollo,* pp. 159-161; Orders dated 26 June 2008 and 7 August 2008.

[21] *Id*. at 316; Order dated 5 November 2008.

[22] *Id.* at 318; Order dated 5 November 2008.

[23] *Id*. at 70.

[24] *Id*. at 574-575.

belonging to the same component unit as any of the parties to the cases before them.

This amendment acquired a questionable character, as it was sought to be implemented *subsequent* to the breach by the IAB of its own rules.[25] In our view, the supervening revision of A.O. 16 contravenes the avowed policy of the Office of the Ombudsman to "adopt and promulgate stringent rules that shall ensure fairness, impartiality, propriety and integrity in all its actions."[26]

Changing regulations in the middle of the proceedings without reason, after the violation has accrued, does not comply with fundamental fairness, or in other words, due process of law.[27] In *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila,*[28] this Court characterized due process of law in this manner:

> It is responsiveness to the supremacy of reason, obedience to the dictates of justice. Negatively put, arbitrariness is ruled out and unfairness avoided. To satisfy the due process requirement, official action, to paraphrase Cardozo, must not outrun the bounds of reasons and result in sheer oppression. Due process is thus hostile to any official action marred by lack of reasonableness. Correctly has it been identified as freedom from arbitrariness. It is the embodiment of the sporting idea of fair play.

Violation of Administrative Order No. 7

According to Section 4, Rule II of A.O. 7 entitled "Rules of Procedure of the Office of the Ombudsman," supporting

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[25] *Pacia v. Kapisanan ng mga Manggagawa sa Manila Railroad Co.,* 99 Phil. 45 (1956).

[26] Administrative Order No. 16, Statement of Policy, paragraph c (2003); see *People v. Lacson*, 459 Phil. 330 (2003).

[27] See *Buyco v. Philippine National Bank*, 112 Phil. 588 (1961) and *Tan, Jr. v. Court of Appeals,* 424 Phil. 556 (2002); see also Hector S. De Leon and Hector M. De Leon, Jr. *Administrative Law: Text and Cases* (2013), p. 142, citing 73 CJS at 431-432.

[28] 127 Phil. 306-326 (1967).

witnesses must execute affidavits to substantiate a complaint against a person under preliminary investigation.[29] Affidavits are voluntary declarations of fact written down and sworn to by the declarant before an officer authorized to administer oaths.[30]

Here, the IAB concluded that a "majority of the OSP officers and employees disclaimed that they had knowledge of and consented to the turning-over of their donations to Gawad Kalinga Foundation."[31] As its basis, public respondent relied upon the Manifestation dated 4 September 2008 signed by 28 officials and employees of the OSP.[32]

That Manifestation, which purports to be the voice of the majority belying the donation to Gawad Kalinga, does not qualify as an affidavit as it was not sworn to by the declarants before an officer authorized to administer oaths. Therefore, based on A.O. 7, public respondents should not have considered an unverified and unidentified private document as evidence in its proceeding against petitioner.

CONCLUSION

There is no dispute that public respondents blatantly violated their own regulations by continuously disregarding the disqualification of Casimiro and utilizing a disallowed document as basis for the assailed ruling. Worse, the board did not remedy its breaches or give any reason to justify its transgressions.

In *Agbayani v. COMELEC,*[33] wherein the tribunal violated its own procedure, this Court held:

The petitioner has correctly pointed out that the Order of the First Division of the COMELEC dismissing the pre-proclamation controversy and the Resolution of the COMELEC *en banc* denying

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[29] Administrative Order No. 07 (1990).

[30] *BLACK'S LAW DICTIONARY* 126 (9th ed. 2009).

[31] *Rollo,* p. 72.

[32] *Id*. at 268-270.

[33] 264 Phil. 861 (1990).

the motion for reconsideration were both penned by Commissioner Abueg, in violation of its rule that —

> ... No member shall be the 'ponente' of an *en banc* decision, resolution or a motion to reconsider a decision/resolution written by him in a Division.

This is still another, reason why the challenged acts must be reversed. The Commission on Elections **should be the first to respect and obey its own rules, if only to provide the proper example to those appearing before it and to avoid all suspicion of bias or arbitrariness in its proceedings.** (Emphasis supplied)

Therefore, by doing the exact opposite of what the rules command, public respondents have demonstrated their patent and persistent disregard of the law. Certiorari, therefore, lies.[34] In no uncertain terms, we pronounced in *Jardin v. National Labor Relations Commission*[35] as follows:

> The phrase "grave abuse of discretion amounting to lack or excess of jurisdiction" has settled meaning in the jurisprudence of procedure. It means such capricious and whimsical exercise of judgment by the tribunal exercising judicial or quasi-judicial power as to amount to lack of power. In labor cases, this Court has declared in several instances that **disregarding rules it is bound to observe constitutes grave abuse of discretion** on the part of labor tribunal. (Emphasis supplied)

In *Fabella v. Court of Appeals,*[36] the dismissed public school teachers were tried by an improperly constituted tribunal. The Court ruled therein that the "committees were deemed to have no competent jurisdiction. Thus, all proceedings undertaken by them were necessarily void." Given that petitioner herein faced a similar predicament, we likewise rule that the proceedings

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[34] *Luna v. Allado Construction Co., Inc.,* 664 Phil. 509 (2011); *Information Technology Foundation of the Philippines v. Commission on Elections*, 464 Phil. 173 (2004); and *Silva v. National Labor Relations Commission*, 340 Phil. 286 (1997).

[35] *Jardin v. National Labor Relations Commission*, 383 Phil. 187 (2000).

[36] 346 Phil. 940 (1997).

against him before the IAB, as approved by the Ombudsman, are null and void.[37]

WHEREFORE, the Petition for Certiorari filed by petitioner Dennis M. Villa-Ignacio is **GRANTED**. The Resolution dated 4 February 2010 and Joint Order dated 4 June 2010 of the Office of the Ombudsman's Internal Affairs Board approved by the Ombudsman in OMB-C-C-08-0132-D, are **REVERSED** and **SET ASIDE**. The Information for *estafa* under Article 315 (1) (b) of the Revised Penal Code, filed before the Sandiganbayan in Criminal Case Number SB-10-CRM-0110, is **DISMISSED**.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Mendoza, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

Reyes, J., on official leave.

EN BANC

[G.R. No. 224302. February 21, 2017]

HON. PHILIP A. AGUINALDO, HON. REYNALDO A. ALHAMBRA, HON. DANILO S. CRUZ, HON. BENJAMIN T. POZON, HON. SALVADOR V. TIMBANG, JR., and the INTEGRATED BAR OF THE PHILIPPINES (IBP), *petitioners, vs.* **HIS EXCELLENCY PRESIDENT BENIGNO SIMEON C. AQUINO III, HON. EXECUTIVE SECRETARY PAQUITO N. OCHOA, HON. MICHAEL FREDERICK L. MUSNGI, HON. MA. GERALDINE FAITH A.**

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[37] See *Beja, Sr. v. Court of Appeals*, G.R. No. 97149, 31 March 1992.

ECONG, HON. DANILO S. SANDOVAL, HON. WILHELMINA B. JORGE-WAGAN, HON. ROSANA FE ROMERO-MAGLAYA, HON. MERIANTHE PACITA M. ZURAEK, HON. ELMO M. ALAMEDA, and HON. VICTORIA C. FERNANDEZ-BERNARDO, *respondents,*

JUDICIAL AND BAR COUNCIL, *intervenor.*

SYLLABUS

1. REMEDIAL LAW; COURTS; SUPREME COURT; INTERNAL RULES OF THE SUPREME COURT; INHIBITION; GROUNDS; NOT PRESENT IN CASE AT BAR.— There is no ground for the mandatory inhibition of the *ponente* from the case at bar. The *ponente* has absolutely no personal interest in this case. The *ponente* is not a counsel, partner, or member of a law firm that is or was the counsel in the case; the *ponente* or her spouse, parent, or child has no pecuniary interest in the case; and the *ponente* is not related to any of the parties in the case within the sixth degree of consanguinity or affinity, or to an attorney or any member of a law firm who is counsel of record in the case within the fourth degree of consanguinity or affinity. The *ponente* is also not privy to any proceeding in which the JBC discussed and decided to adopt the unprecedented method of clustering the nominees for the six simultaneous vacancies for Sandiganbayan Associate Justice into six separate short lists, one for every vacancy. The *ponente* does not know when, how, and why the JBC adopted the clustering method of nomination for appellate courts and even the Supreme Court. x x x Neither is there any basis for the *ponente's* voluntary inhibition from the case at bar. Other than the bare allegations of the JBC, there is no clear and convincing evidence of the *ponente's* purported bias and prejudice, sufficient to overcome the presumption that she had rendered her assailed *ponencia* in the regular performance of her official and sacred duty of dispensing justice according to law and evidence and without fear or favor. x x x Furthermore, it appears from the admitted lack of consensus on the part of the JBC Members as to the validity of the clustering shows that the conclusion reached by

the *ponente* did not arise from personal hostility but from her objective evaluation of the adverse constitutional implications of the clustering of the nominees for the vacant posts of Sandiganbayan Associate Justice.

2. POLITICAL LAW; JUDICIAL DEPARTMENT; APPOINTMENT TO THE JUDICIARY; THE INDEPENDENCE AND DISCRETION OF THE JUDICIAL AND BAR COUNCIL (JBC) CANNOT IMPAIR THE PRESIDENT'S POWER TO APPOINT MEMBERS OF THE JUDICIARY AND HIS STATUTORY POWER TO DETERMINE THE SENIORITY OF THE NEWLY-APPOINTED SANDIGANBAYAN ASSOCIATE JUSTICES; CASE AT BAR.— Noteworthy is the fact that the Court unanimously voted that in this case of six simultaneous vacancies for Sandiganbayan Associate Justice, the JBC acted beyond its constitutional mandate in clustering the nominees into six separate short lists and President Aquino did not commit grave abuse of discretion in disregarding the said clustering. The JBC invokes its independence, discretion, and wisdom, and maintains that it deemed it wiser and more in accord with Article VIII, Section 9 of the 1987 Constitution to cluster the nominees for the six simultaneous vacancies for Sandiganbayan Associate Justice into six separate short lists. The independence and discretion of the JBC, however, is not without limits. It cannot impair the President's power to appoint members of the Judiciary and his statutory power to determine the seniority of the newly-appointed Sandiganbayan Associate Justices. The Court cannot sustain the strained interpretation of Article VIII, Section 9 of the 1987 Constitution espoused by the JBC, which ultimately curtailed the President's appointing power.

3. ID.; ID.; ID.; COLLEGIATE COURTS; THE CLUSTERING BY THE JBC OF NOMINEES FOR SIMULTANEOUS OR CLOSELY SUCCESSIVE VACANCIES IN COLLEGIATE COURTS WITHOUT OBJECTIVE STANDARDS MAY OPEN THE CLUSTERING TO MANIPULATION TO FAVOR OR PREJUDICE A QUALIFIED NOMINEE.— The Court emphasizes that the requirements and qualifications, as well as the powers, duties, and responsibilities are the same for all vacant posts in a collegiate court, such as the Sandiganbayan; and if an individual is found to be qualified

for one vacancy, then he/she is found to be qualified for all the other vacancies — there are no distinctions among the vacant posts. It is improbable that the nominees expressed their desire to be appointed to only a specific vacant position and not the other vacant positions in the same collegiate court, when neither the Constitution nor the law provides a specific designation or distinctive description for each vacant position in the collegiate court. The JBC did not cite any cogent reason in its Motion for Reconsideration-in-Intervention for assigning a nominee to a particular cluster/vacancy. The Court highlights that without objective criteria, standards, or guidelines in determining which nominees are to be included in which cluster, the clustering of nominees for specific vacant posts seems to be at the very least, totally arbitrary. The lack of such criteria, standards, or guidelines may open the clustering to manipulation to favor or prejudice a qualified nominee.

4. ID.; ID.; ID.; ID.; THE PRESIDENT HAS THE SOLE POWER TO DETERMINE THE SENIORITY OF THE JUSTICES APPOINTED TO A COLLEGIATE COURT.— The 1987 Constitution itself, by creating the JBC and requiring that the President can only appoint judges and Justices from the nominees submitted by the JBC, already sets in place the mechanism to protect the appointment process from political pressure. By arbitrarily clustering the nominees for appointment to the six simultaneous vacancies for Sandiganbayan Associate Justice into separate short lists, the JBC influenced the appointment process and encroached on the President's power to appoint members of the Judiciary and determine seniority in the said court, beyond its mandate under the 1987 Constitution. As the Court pronounced in its Decision dated November 29, 2016, the power to recommend of the JBC cannot be used to restrict or limit the President's power to appoint as the latter's prerogative to choose someone whom he/she considers worth appointing to the vacancy in the Judiciary is still paramount. As long as in the end, the President appoints someone nominated by the JBC, the appointment is valid, and he, not the JBC, determines the seniority of appointees to a collegiate court.

VELASCO, JR., *J., separate opinion*:

1. **REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; THE JUDICIAL AND BAR COUNCIL IS CLOTHED WITH LEGAL INTEREST TO INTERVENE IN THE PROCEEDINGS, FOR THE DECLARATION OF THE COURT THAT THE CLUSTERING OF NOMINEES BY THE JBC FOR SIMULTANEOUS VACANCIES IN THE COLLEGIATE COURT IS UNCONSTITUTIONAL, IS THE VERY CORE OF THE CONTROVERSY; CASE AT BAR.—** I x x x concur with the majority that the Judicial and Bar Council (JBC) should be allowed to intervene in the present proceeding. The nullification of the JBC's act of clustering the nominees for the Sandiganbayan vacancies was a precondition before the Court could have upheld the validity of the subject appointments. In fact, this was where the Office of the Solicitor General (OSG) primarily anchored its defenses. I cannot, therefore, agree that "[t]he declaration of the Court that the clustering of nominees by the JBC for simultaneous vacancies in the collegiate court is unconstitutional was only **incidental** to its ruling." On the contrary, it is, as it remains to be, the very core of the controversy. It thus behooved this Court to hear the counter-arguments of the JBC against the OSG's contention. Beyond quibble then is that the JBC is clothed with legal interest to take part in this case.

2. **POLITICAL LAW; JUDICIAL DEPARTMENT; APPOINTMENT TO THE JUDICIARY; COLLEGIATE COURTS; THE UNCONSTITUTIONALITY OF CLUSTERING OF NOMINEES IS LIMITED TO SIMULTANEOUS VACANCIES IN COLLEGIATE COURTS, NOT TO CLOSELY SUCCESSIVE VACANCIES THERETO.—** I am amenable to the x x x decretal portion of the November 29, 2016 Decision but, regrettably, I cannot fully agree with the following statement made in the discussion therein: **"The ruling of the Court in this case shall similarly apply to the situation wherein there are closely successive vacancies in a collegiate court, to which the President shall make appointments on the same occasion, regardless of whether the JBC carried out combined or separate application process/es for the vacancies.** The President is not bound by the clustering of nominees by the JBC and may consider as one the separate shortlists of nominees

concurrently submitted by the JBC." This sweeping statement automatically makes an issue on how future nominations and appointments are to be made. It is not a mere *pro hac vice* ruling on the particular appointments in issue herein, but precedent setting. Preferably, the Court ought to take up the issue on whether or not the clustering of nominees is valid for closely successive appointments when there is an actual justiciable controversy on the matter. However, the Court's power of supervision over the JBC, to my mind, permits us to grab the bull by the horns and resolve the boundaries of the doctrine set herein to serve as a guide not only to the JBC but also to the incumbent President. My misgivings on the above declaration stem from the fact that separate application processes would yield varying number of applicants and different persons applying. It would then be erroneous to treat as one group the applicants who vied for different posts. x x x These are legitimate concerns that would arise should the Court sustain its Decision. These contingencies should have been clearly addressed before we refrained from limiting the application of the ruling *pro hac vice* and instead ruled that it may validly and similarly be invoked in situations "wherein there are closely successive vacancies in a collegiate court, x x x regardless of whether the JBC carried out combined or separate application process/es for the vacancies.

LEONEN, *J., separate opinion*:

1. POLITICAL LAW; JUDICIAL DEPARTMENT; APPOINTMENT TO THE JUDICIARY; JUDICIAL AND BAR COUNCIL; NOT MERELY A TECHNICAL COMMITTEE THAT EVALUATES THE FITNESS AND INTEGRITY OF APPLICANTS IN THE JUDICIARY BUT A CONSTITUTIONAL ORGAN PARTICIPATING IN THE PROCESS THAT GUIDES THE DIRECTION OF THE JUDICIARY.— The Judicial and Bar Council was created under the 1987 Constitution. It was intended to be a fully independent constitutional body functioning as a check-and-balance on the President's power of appointment. x x x The Judicial and Bar Council is not merely a technical committee that evaluates the fitness and integrity of applicants in the Judiciary. It is a constitutional organ participating in the process

that guides the direction of the Judiciary. Its composition represents a cross section of the legal profession, retired judges and Justices, and the Chief Justice. More than a technical committee, it has the power to examine the judicial philosophies of the applicants and make selections, which it submits to the President. The President may have the final discretion to choose, but he or she chooses only from that list. This is the complex relationship mandated by the sovereign through the Constitution. It ensures judicial independence, checks and balances on the Judiciary, and assurance for the rule of law.

2. REMEDIAL LAW; COURTS; SINGLE COURTS AND COLLEGIAL COURTS, DISTINGUISHED.— As a collegial court, the Sandiganbayan seats members who equally share power and sit in divisions of three (3) members each. The numerical designation of each division only pertains to the seniority or order of precedence based on the date of appointment. The Rule on Precedence is in place primarily for the orderly functioning of the Sandiganbayan, as reflected in Rule II, Section 1 of the Revised Internal Rules of the Sandiganbayan x x x. In single courts such as the regional trial courts or municipal trial courts, each branch carries its own station code and acts separately and independently from other co-equal branches. On the other hand, the Sandiganbayan divisions, as part of a collegial court, do not possess similar station codes. This is because there is no discernible difference between the divisions, and decisions are made not by one justice alone but by a majority or all of the members sitting in a division or *En Banc*. This reinforces the collegial nature of the Sandiganbayan: one that is characterized by the equal sharing of authority among the members. Additionally, in single courts, applicants may apply for each available vacancy; thus, to find the same applicant in shortlists for vacancies in different single courts is common. On the other hand, applicants in collegial courts apply only once even when there are simultaneous vacancies because among divisions in a collegial court, there is no substantial difference to justify the creation of separate shortlists or clusters for each vacancy.

3. POLITICAL LAW; JUDICIAL DEPARTMENT; APPOINTMENT TO THE JUDICIARY; JUDICIAL AND BAR COUNCIL; HAS BEEN GIVEN THE LATITUDE TO PROMULGATE

ITS OWN RULES AND PROCEDURES AND THE SUPREME COURT CANNOT MEDDLE IN ITS INTERNAL RULES AND POLICIES.— [T]he Judicial and Bar Council is not mandated to submit its revised internal rules to this Court for approval. *Jardeleza v. Sereno* emphasized that this Court's power of judicial review is only to ensure that rules are followed. It has neither the power to lay down these rules nor the discretion to modify or replace them. The Internal Rules of the Judicial and Bar Council is necessary and incidental to the function conferred to it by the Constitution. The Constitution may have provided the qualifications of the members of the Judiciary, but it has given the Judicial and Bar Council the latitude to promulgate its own set of rules and procedures to effectively ensure its mandate. This Court cannot meddle in the Judicial and Bar Council's internal rules and policies. To do so would be an unconstitutional affront to the Judicial and Bar Council's independence.

CAGUIOA, *J., separate opinion*:

POLITICAL LAW; JUDICIAL DEPARTMENT; APPOINTMENT TO THE JUDICIARY; COLLEGIATE COURTS; THERE IS NO VIOLATION OF THE CONSTITUTION WHEN THE GROUPING OF AT LEAST THREE NOMINEES FOR EVERY VACANCY BY THE JUDICIAL AND BAR COUNCIL (JBC) DID NOT IMPINGE ON THE PRESIDENT'S APPOINTING POWER AND THE ACT OF THE PRESIDENT IN DISREGARDING THE JBC's CLUSTERING DID NOT CONSTITUTE GRAVE ABUSE OF DISCRETION; CASE AT BAR.— In plain terms, the Court is confronted with the proper interpretation of Section 9, Article VIII of the Constitution x x x. President Aquino was presented with six lists to fill up the six vacancies in the Sandiganbayan. Each list has at least three nominees. An appointment coming from each of the six lists would be in keeping with the Constitutional provision. I cannot see it otherwise. Thus, had President Aquino picked one from each of the six lists prepared by the JBC, I would not have declared his action unconstitutional. My basis is the plain language of the above Constitutional provision which mandates the JBC to recommend nominees to any vacancy in the judiciary—to prepare

a list of at least three nominees for every vacancy. So long as the grouping of at least three nominees for every vacancy by the JBC did not impinge on the President's appointing power, there is, in my view, no violation of the Constitution. Thus, I cannot view as grave abuse of discretion the act of the JBC in adopting the six lists it came up with following its "textualist approach of constitutional interpretation". In the same vein, that President Aquino chose to disregard JBC's clustering, and considered all the 37 nominees named in the six lists, is likewise "textually compliant" with Section 9, Article VIII of the Constitution (*i.e.*, because there are at least three nominees for each of the six Associate Justice positions). For this reason, I cannot find the act of President Aquino as constituting grave abuse of discretion. In fine, I find nothing unconstitutional in the questioned action of the JBC—in the same manner that I find nothing unconstitutional in the act of President Aquino in disregarding the clustering done by the JBC, and in choosing Associate Justices for each of the vacancies "outside" of the "clustered" lists provided by the JBC.

APPEARANCES OF COUNSEL

Vicente M. Joyas for petitioners.
The Solicitor General for respondents.

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

In its Decision dated November 29, 2016, the Court *En Banc* held:

WHEREFORE, premises considered, the Court **DISMISSES** the instant Petition for *Quo Warranto* and *Certiorari* and Prohibition for lack of merit. The Court **DECLARES** the clustering of nominees by the Judicial and Bar Council **UNCONSTITUTIONAL**, and the appointments of respondents Associate Justices Michael Frederick L. Musngi and Geraldine Faith A. Econg, together with the four other newly-appointed Associate Justices of the Sandiganbayan, as **VALID**. The Court further **DENIES** the Motion for Intervention of the Judicial and Bar Council in the present Petition, but **ORDERS** the Clerk of

Court *En Banc* to docket as a separate administrative matter the new rules and practices of the Judicial and Bar Council which the Court took cognizance of in the preceding discussion as ***Item No. 2***: the deletion or non-inclusion in JBC No. 2016-1, or the Revised Rules of the Judicial and Bar Council, of Rule 8, Section 1 of JBC-009; and ***Item No. 3***: the removal of incumbent Senior Associate Justices of the Supreme Court as consultants of the Judicial and Bar Council, referred to in pages 35 to 40 of this Decision. The Court finally **DIRECTS** the Judicial and Bar Council to file its comment on said ***Item Nos. 2 and 3*** within thirty (30) days from notice.[1]

I
THE JBC MOTIONS

The Judicial and Bar Council (JBC) successively filed a Motion for Reconsideration (with Motion for the Inhibition of the *Ponente*) on December 27, 2016 and a Motion for Reconsideration-in-Intervention (Of the Decision dated 29 November 2016) on February 6, 2017.

At the outset, the Court notes the revelation of the JBC in its Motion for Reconsideration-in-Intervention that it is not taking any position in this particular case on President Aquino's appointments to the six newly-created positions of Sandiganbayan Associate Justice. The Court quotes the relevant portions from the Motion, as follows:

The immediate concern of the JBC is this Court's pronouncement that the former's act of submitting six lists for six vacancies was unconstitutional. Whether the President can cross-reach into the lists is not the primary concern of the JBC in this particular case. At another time, perhaps, it may take a position. But not in this particular situation involving the newly created positions in the Sandiganbayan in view of the lack of agreement by the JBC Members on that issue.

What the President did with the lists, for the purpose of this particular dispute alone as far as the JBC is concerned, was the President's exclusive domain.[2]

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[1] *Rollo*, pp. 250-251.

[2] Motion for Reconsideration-in-Intervention, pp. 18-19.

Nonetheless, the JBC did not categorically withdraw the arguments raised in its previous Motions, and even reiterated and further discussed said arguments, and raised additional points in its Motion for Reconsideration-in-Intervention. Hence, the Court is still constrained to address said arguments in this Resolution.

In its Motion for Reconsideration (with Motion for Inhibition of the *Ponente*) the JBC argues as follows: (a) Its Motion for Intervention was timely filed on November 26, 2016, three days before the promulgation of the Decision in the instant case; (b) The JBC has a legal interest in this case, and its intervention would not have unduly delayed or prejudiced the adjudication of the rights of the original parties; (c) Even assuming that the Motion for Intervention suffers procedural infirmities, said Motion should have been granted for a complete resolution of the case and to afford the JBC due process; and (d) Unless its Motion for Intervention is granted by the Court, the JBC is not bound by the questioned Decision because the JBC was neither a party litigant nor impleaded as a party in the case, the JBC was deprived of due process, the assailed Decision is a judgment *in personam* and not a judgment *in rem*, and a decision rendered in violation of a party's right to due process is void for lack of jurisdiction.

On the merits of the case, the JBC asserts that in submitting six short lists for six vacancies, it was only acting in accordance with the clear and unambiguous mandate of Article VIII, Section 9[3] of the 1987 Constitution for the JBC to submit a list for every vacancy. Considering its independence as a constitutional body, the JBC has the discretion and wisdom to perform its mandate in any manner as long as it is consistent with the Constitution. According to the JBC, its new practice

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[3] Art. VIII, Sec. 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.

For the lower courts, the President shall issue the appointments within ninety days from the submission of the list.

of "clustering," in fact, is more in accord with the purpose of the JBC to rid the appointment process to the Judiciary from political pressure as the President has to choose only from the nominees for one particular vacancy. Otherwise, the President can choose whom he pleases, and thereby completely disregard the purpose for the creation of the JBC. The JBC clarifies that it numbered the vacancies, not to influence the order of precedence, but for practical reasons, *i.e.*, to distinguish one list from the others and to avoid confusion. The JBC also points out that the acts invoked against the JBC are based on practice or custom, but "practice, no matter how long continued, cannot give rise to any vested right." The JBC, as a constitutional body, enjoys independence, and as such, it may change its practice from time to time in accordance with its wisdom.

Lastly, the JBC moves for the inhibition of the *ponente* of the assailed Decision based on Canon 3, Section 5 of the New Code of Judicial Conduct for Philippine Judiciary.[4] The JBC

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[4] Sec. 5. Judges shall disqualify themselves from participating in any proceedings in which they are unable to decide the matter impartially or in which it may appear to a reasonable observer that they are unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where

(a) The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;

(b) The judge previously served as a lawyer or was a material witness in the matter in controversy;

(c) The judge, or a member of his or her family, has an economic interest in the outcome of the matter in controversy;

(d) The judge served as executor, administrator, guardian, trustee or lawyer in the case or matter in controversy, or a former associate of the judge served as counsel during their association, or the judge or lawyer was a material witness therein;

(e) The judge's ruling in a lower court is the subject of review;

(f) The judge is related by consanguinity or affinity to a party litigant within the sixth civil degree or to counsel within the fourth civil degree; or

(g) The judge knows that his or her spouse or child has a financial interest, as heir, legatee, creditor, fiduciary, or otherwise, in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceedings[.]

alleges that the *ponente*, as consultant of the JBC from 2014 to 2016, had personal knowledge of the voting procedures and format of the short lists, which are the subject matters of this case. The *ponente* was even present as consultant during the meeting on October 26, 2015 when the JBC voted upon the candidates for the six new positions of Associate Justice of the Sandiganbayan created under Republic Act No. 10660. The JBC then expresses its puzzlement over the *ponente's* participation in the present proceedings, espousing a position contrary to that of the JBC. The JBC questions why it was only in her Decision in the instant case did the *ponente* raise her disagreement with the JBC as to the clustering of nominees for each of the six simultaneous vacancies for Sandiganbayan Associate Justice. The JBC further quoted portions of the assailed Decision that it claims bespoke of the *ponente's* "already-arrived-at" conclusion as to the alleged ill acts and intentions of the JBC. Hence, the JBC submits that such formed inference will not lend to an even-handed consideration by the *ponente* should she continue to participate in the case.

Ultimately, the JBC prays:

> IN VIEW OF THE FOREGOING, it is respectfully prayed that the DECISION dated 29 November 2016 be reconsidered and set aside and a new one be issued granting the Motion for Intervention of the JBC.
>
> It is likewise prayed that the ponente inhibit herself from further participating in this case and that the JBC be granted such other reliefs as are just and equitable under the premises.[5]

The JBC subsequently filed a Motion for Reconsideration-in-Intervention (Of the Decision dated 29 November 2016), praying at the very beginning that it be deemed as sufficient remedy for the technical deficiency of its Motion for Intervention (*i.e.*, failure to attach the pleading-in-intervention) and as Supplemental Motion for Reconsideration of the denial of its Motion for Intervention.

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[5] *Rollo*, p. 277.

The JBC, in its latest Motion, insists on its legal interest, injury, and standing to intervene in the present case, as well as on the timeliness of its Motion for Intervention.

The JBC proffers several reasons for not immediately seeking to intervene in the instant case despite admitting that it received copies of the appointments of the six Sandiganbayan Associate Justices from the Office of the President (OP) on January 25, 2016, to wit: (a) Even as its individual Members harbored doubts as to the validity of the appointments of respondents Michael Frederick L. Musngi (Musngi) and Geraldine Faith A. Econg (Econg) as Sandiganbayan Associate Justices, the JBC agreed as a body in an executive session that it would stay neutral and not take any legal position on the constitutionality of said appointments since it "did not have any legal interest in the offices of Associate Justices of the Sandiganbayan"; (b) None of the parties prayed that the act of clustering by the JBC be declared unconstitutional; and (c) The JBC believed that the Court would apply the doctrine of presumption of regularity in the discharge by the JBC of its official functions and if the Court would have been inclined to delve into the validity of the act of clustering by the JBC, it would order the JBC to comment on the matter.

The JBC impugns the significance accorded by the *ponente* to the fact that Chief Justice Maria Lourdes P. A. Sereno (Sereno), Chairperson of the JBC, administered the oath of office of respondent Econg as Sandiganbayan Associate Justice on January 25, 2016. Chief Justice Sereno's act should not be taken against the JBC because, the JBC reasons, Chief Justice Sereno only chairs the JBC, but she is not the JBC, and the administration of the oath of office was a purely ministerial act.

The JBC likewise disputes the *ponente's* observation that clustering is a totally new practice of the JBC. The JBC avers that even before Chief Justice Sereno's Chairmanship, the JBC has generally followed the rule of one short list for every vacancy in all first and second level trial courts. The JBC has followed the "one list for every vacancy" rule even for appellate courts

since 2013. The JBC even recalls that it submitted on August 17, 2015 to then President Benigno Simeon C. Aquino III (Aquino) four separate short lists for four vacancies in the Court of Appeals; and present during the JBC deliberations were the *ponente* and Supreme Court Associate Justice Presbitero J. Velasco, Jr. (Velasco) as consultants, who neither made any comment on the preparation of the short lists.

On the merits of the Petition, the JBC maintains that it did not exceed its authority and, in fact, it only faithfully complied with the literal language of Article VIII, Section 9 of the 1987 Constitution, when it prepared six short lists for the six vacancies in the Sandiganbayan. It cites the cases of *Atong Paglaum, Inc. v. Commission on Elections*[6] and *Ocampo v. Enriquez*,[7] wherein the Court allegedly adopted the textualist approach of constitutional interpretation.

The JBC renounces any duty to increase the chances of appointment of every candidate it adjudged to have met the minimum qualifications. It asserts that while there might have been favorable experiences with the past practice of submitting long consolidated short lists, past practices cannot be used as a source of rights and obligations to override the duty of the JBC to observe a straightforward application of the Constitution.

The JBC posits that clustering is a matter of legal and operational necessity for the JBC and the only safe standard operating procedure for making short lists. It presents different scenarios which demonstrate the need for clustering, *viz.*, (a) There are two different sets of applicants for the vacancies; (b) There is a change in the JBC composition during the interval in the deliberations on the vacancies as the House of Representatives and the Senate alternately occupy the *ex officio* seat for the Legislature; (c) The applicant informs the JBC of his/her preference for assignment in the Cebu Station or Cagayan de Oro Station of the Court of Appeals because of the location

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[6] 707 Phil. 754 (2013).

[7] G.R. Nos. 225973, 225984, 226097, 226116, 226117, 226120, & 226294, November 8, 2016.

or the desire to avoid mingling with certain personalities; (d) The multiple vacancies in newly-opened first and second level trial courts; and (e) The dockets to be inherited in the appellate court are overwhelming so the JBC chooses nominees for those particular posts with more years of service as against those near retirement.

To the JBC, it seems that the Court was in a hurry to promulgate its Decision on November 29, 2016, which struck down the practice of clustering by the JBC. The JBC supposes that it was in anticipation of the vacancies in the Court as a result of the retirements of Supreme Court Associate Justices Jose P. Perez (Perez) and Arturo D. Brion (Brion) on December 14, 2016 and December 29, 2016, respectively. The JBC then claims that it had no choice but to submit two separate short lists for said vacancies in the Court because there were two sets of applicants for the same, *i.e.*, there were 14 applicants for the seat vacated by Justice Perez and 17 applicants for the seat vacated by Justice Brion.

The JBC further contends that since each vacancy creates discrete and possibly unique situations, there can be no general rule against clustering. Submitting separate, independent short lists for each vacancy is the only way for the JBC to observe the constitutional standards of (a) one list for every vacancy, and (b) choosing candidates of competence, independence, probity, and integrity for every such vacancy.

It is also the asseveration of the JBC that it did not encroach on the President's power to appoint members of the Judiciary. The JBC alleges that its individual Members gave several reasons why there was an apparent indication of seniority assignments in the six short lists for the six vacancies for Sandiganbayan Associate Justice, particularly: (a) The JBC can best perform its job by indicating who are stronger candidates by giving higher priority to those in the lower-numbered list; (b) The indication could head off the confusion encountered in *Re: Seniority Among the Four Most Recent Appointments to the Position of Associate Justices of the Court of Appeals*;[8] and

[8] 646 Phil. 1 (2010).

(c) The numbering of the lists from 16th to 21st had nothing to do with seniority in the Sandiganbayan, but was only an ordinal designation of the cluster to which the candidates were included.

The JBC ends with a reiteration of the need for the *ponente* to inhibit herself from the instant case as she appears to harbor hostility possibly arising from the termination of her JBC consultancy.

The prayer of the JBC in its Motion for Reconsideration-in-Intervention reads:

> IN VIEW OF THE FOREGOING, it is respectfully prayed that JBC's Motion for Reconsideration-in-Intervention, Motion for Intervention and Motion for Reconsideration with Motion for Inhibition of Justice Teresita J. Leonardo-De Castro of the JBC be granted and/or given due course and that:
>
> 1. the Court's pronouncements in the Decision dated 29 November 2016 with respect to the JBC's submission of six shortlists of nominees to the Sandiganbayan be modified to reflect that the JBC is deemed to have followed Section 9, Article VIII of the Constitution in its practice of submitting one shortlist of nominees for every vacancy, including in submitting on 28 October 2015 six lists to former President Benigno Simeon C. Aquino III for the six vacancies of the Sandiganbayan, or for the Court to be completely silent on the matter; and
>
> 2. the Court delete the treatment as a separate administrative matter of the alleged new rules and practices of the JBC, particularly the following: (1) the deletion or non-inclusion of Rule 8, Section 1 of JBC-009 in JBC No. 2016-1, or the Revised Rules of the Judicial and Bar Council; and (2) the removal of incumbent Senior Associate Justices of the Supreme Court as consultants of the JBC, referred to in pages 35 to 40 of the Decision. And as a consequence, the Court excuse the JBC from filing the required comment on the said matters.[9]

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[9] *Supra* note 2 at 32.

II
THE RULING OF THE COURT

There is no legal or factual basis for the ponente to inhibit herself from the instant case.

The Motion for Inhibition of the *Ponente* filed by the JBC is denied.

The present Motion for Inhibition has failed to comply with Rule 8, Section 2 of the Internal Rules of the Supreme Court,[10] which requires that "[a] motion for inhibition must be in writing and **under oath** and shall state the grounds therefor." Yet, even if technical rules are relaxed herein, there is still no valid ground for the inhibition of the *ponente*.

There is no ground[11] for the mandatory inhibition of the *ponente* from the case at bar.

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[10] A.M. No. 10-4-20-SC, May 4, 2010.

[11] Rule 8, Section 1 of the Internal Rules of the Supreme Court provides:

Sec. 1. *Grounds for Inhibition.* — A Member of the Court shall inhibit himself or herself from participating in the resolution of the case for any of these and similar reasons:

(a) the Member of the Court was the *ponente* of the decision or participated in the proceedings in the appellate or trial court;

(b) the Member of the Court was counsel, partner or member of a law firm that is or was the counsel in the case subject to Section 3 of this rule;

(c) the Member of the Court or his or her spouse, parent or child is pecuniarily interested in the case;

(d) the Member of the Court is related to either party in the case within the sixth degree of consanguinity or affinity, or to an attorney or any member of a law firm who is counsel of record in the case within the fourth degree of consanguinity or affinity;

(e) the Member of the Court was executor, administrator, guardian or trustee in the case; and

(f) the Member of the Court was an official or is the spouse of an official or former official of a government agency or private entity that is a party to the case, and the Justice or his or her spouse has reviewed or acted on any matter relating to the case.

The *ponente* has absolutely no personal interest in this case. The *ponente* is not a counsel, partner, or member of a law firm that is or was the counsel in the case; the *ponente* or her spouse, parent, or child has no pecuniary interest in the case; and the *ponente* is not related to any of the parties in the case within the sixth degree of consanguinity or affinity, or to an attorney or any member of a law firm who is counsel of record in the case within the fourth degree of consanguinity or affinity.

The *ponente* is also not privy to any proceeding in which the JBC discussed and decided to adopt the unprecedented method of clustering the nominees for the six simultaneous vacancies for Sandiganbayan Associate Justice into six separate short lists, one for every vacancy. The *ponente* does not know when, how, and why the JBC adopted the clustering method of nomination for appellate courts and even the Supreme Court.

With due respect to Chief Justice Sereno, it appears that when the JBC would deliberate on highly contentious, sensitive, and important issues, it was her policy as Chairperson of the JBC to hold executive sessions, which excluded the Supreme Court consultants. At the JBC meeting held on October 26, 2015, Chief Justice Sereno immediately mentioned at the beginning of the deliberations "that, as the Council had always done in the past when there are multiple vacancies, the voting would be on a per vacancy basis."[12] Chief Justice Sereno went on to state that the manner of voting had already been explained to the two *ex officio* members of the JBC who were not present during the meeting, namely, Senator Aquilino L. Pimentel III (Pimentel) and then Department of Justice (DOJ) Secretary Alfredo Benjamin S. Caguioa (Caguioa).[13] Then the JBC

A Member of the Court may in the exercise of his or her sound discretion, inhibit himself or herself for a just or valid reason other than any of those mentioned above.

The inhibiting Member must state the precise reason for the inhibition.

[12] Judicial and Bar Council Minutes, 10-2015, October 26, 2015, Monday, *En Banc* Conference Room, New Supreme Court Building, 10:00 a.m., p. 2.

[13] Now Associate Justice of the Supreme Court.

immediately proceeded with the voting of nominees. This *ponente* was not consulted before the JBC decision to cluster nominees was arrived at and, therefore, she did not have the opportunity to study and submit her recommendation to the JBC on the clustering of nominees.

It is evident that prior to the meeting on October 26, 2015, the JBC had already reached an agreement on the procedure it would follow in voting for nominees, *i.e.*, the clustering of the nominees into six separate short lists, with one short list for each of the six newly-created positions of Sandiganbayan Associate Justice. That Senator Pimentel and DOJ Secretary Caguioa, who were not present at the meeting on October 26, 2015, were informed beforehand of the clustering of nominees only proves that the JBC had already agreed upon the clustering of nominees prior to the said meeting.

Notably, Chief Justice Sereno inaccurately claimed at the very start of the deliberations that the JBC had been voting on a per vacancy basis "as the Council had always done," giving the impression that the JBC was merely following established procedure, when in truth, the clustering of nominees for simultaneous or closely successive vacancies in a collegiate court was a new practice only adopted by the JBC under her Chairmanship. In the Decision dated November 29, 2016, examples were already cited how, in previous years, the JBC submitted just one short list for simultaneous or closely successive vacancies in collegiate courts, including the Supreme Court, which will again be presented hereunder.

As previously mentioned, it is the practice of the JBC to hold executive sessions when taking up sensitive matters. The *ponente* and Associate Justice Velasco, incumbent Justices of the Supreme Court and then JBC consultants, as well as other JBC consultants, were excluded from such executive sessions. Consequently, the *ponente* and Associate Justice Velasco were unable to participate in and were kept in the dark on JBC proceedings/decisions, particularly, on matters involving the nomination of candidates for vacancies in the appellate courts and the Supreme Court. The matter of the nomination to the

Supreme Court of now Supreme Court Associate Justice Francis H. Jardeleza (Jardeleza), which became the subject matter of *Jardeleza v. Sereno*,[14] was taken up by the JBC in such an executive session. This *ponente* also does not know when and why the JBC deleted from JBC No. 2016-1, "The Revised Rules of the Judicial and Bar Council," what was Rule 8, Section 1 of JBC-009, the former JBC Rules, which gave due weight and regard to the recommendees of the Supreme Court for vacancies in the Court. The amendment of the JBC Rules could have been decided upon by the JBC when the *ponente* and Associate Justice Velasco were already relieved by Chief Justice Sereno of their duties as consultants of the JBC. The JBC could have similarly taken up and decided upon the clustering of nominees for the six vacant posts of Sandiganbayan Associate Justice during one of its executive sessions prior to October 26, 2015.

Hence, even though the *ponente* and the other JBC consultants were admittedly present during the meeting on October 26, 2015, the clustering of the nominees for the six simultaneous vacancies for Sandiganbayan Associate Justice was already *fait accompli*. Questions as to why and how the JBC came to agree on the clustering of nominees were no longer on the table for discussion during the said meeting. As the minutes of the meeting on October 26, 2015 bear out, the JBC proceedings focused on the voting of nominees. It is stressed that the crucial issue in the present case pertains to the clustering of nominees and not the nomination and qualifications of any of the nominees. This *ponente* only had the opportunity to express her opinion on the issue of the clustering of nominees for simultaneous and closely successive vacancies in collegiate courts in her *ponencia* in the instant case. As a Member of the Supreme Court, the *ponente* is duty-bound to render an opinion on a matter that has grave constitutional implications.

Neither is there any basis for the *ponente's* voluntary inhibition from the case at bar. Other than the bare allegations of the JBC, there is no clear and convincing evidence of the *ponente's*

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[14] G.R. No. 213181, August 19, 2014, 733 SCRA 279.

purported bias and prejudice, sufficient to overcome the presumption that she had rendered her assailed *ponencia* in the regular performance of her official and sacred duty of dispensing justice according to law and evidence and without fear or favor. Significant herein is the following disquisition of the Court on voluntary inhibition of judges in *Gochan v. Gochan*,[15] which is just as applicable to Supreme Court Justices:

> **In a string of cases, the Supreme Court has said that bias and prejudice, to be considered valid reasons for the voluntary inhibition of judges, must be proved with clear and convincing evidence. Bare allegations of their partiality will not suffice. It cannot be presumed, especially if weighed against the sacred oaths of office of magistrates, requiring them to administer justice fairly and equitably** – both to the poor and the rich, the weak and the strong, the lonely and the well-connected. (Emphasis supplied.)

Furthermore, it appears from the admitted lack of consensus on the part of the JBC Members as to the validity of the clustering shows that the conclusion reached by the *ponente* did not arise from personal hostility but from her objective evaluation of the adverse constitutional implications of the clustering of the nominees for the vacant posts of Sandiganbayan Associate Justice. It is unfortunate that the JBC stooped so low in casting aspersion on the person of this *ponente* instead of focusing on sound legal arguments to support its position. There is absolutely no factual basis for the uncalled for and unfair imputation of the JBC that the *ponente* harbors personal hostility against the JBC presumably due to her removal as consultant. The *ponente's* removal as consultant was the decision of Chief Justice Sereno, not the JBC. The *ponente* does not bear any personal grudge or resentment against the JBC for her removal as consultant. The *ponente* does not view Chief Justice Sereno's move as particularly directed against her as Associate Justice Velasco had been similarly removed as JBC consultant. The *ponente* has never been influenced by personal motive in deciding cases. The *ponente*, instead, perceives the removal of incumbent

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[15] 446 Phil. 433, 447-448 (2003).

Supreme Court Justices as consultants of the JBC as an affront against the Supreme Court itself as an institution, since the evident intention of such move was to keep the Supreme Court in the dark on the changes in rules and practices subsequently adopted by the JBC, which, to the mind of this *ponente*, may adversely affect the exercise of the supervisory authority over the JBC vested upon the Supreme Court by the Constitution.

All the basic issues raised in the Petition had been thoroughly passed upon by the Court in its Decision dated November 29, 2016 and the JBC already expressed its disinterest to question President Aquino's "cross-reaching" in his appointment of the six new Sandiganbayan Associate Justices.

Even if the Motion for Reconsideration and Motion for Reconsideration-in-Intervention of the JBC, praying for the grant of its Motion for Intervention and the reversal of the Decision dated November 29, 2016, are admitted into the records of this case and the issues raised and arguments adduced in the said two Motions are considered, there is no cogent reason to reverse the Decision dated November 29, 2016, particularly, in view of the admission of the JBC of the lack of unanimity among the JBC members on the issue involving the clustering of nominees for the six simultaneous vacancies for Sandiganbayan Associate Justice and their disinterest to question the "cross-reaching" or non-observance by President Aquino of such clustering.

Hence, the Court will no longer belabor the issue that only three JBC Members signed the Motion for Intervention and Motion for Reconsideration and only four JBC Members signed the Motion for Reconsideration-in-Intervention, as well as the fact that Chief Justice Sereno, as Chairperson of the JBC, did not sign the three Motions.

To determine the legal personality of the signatories to file the JBC Motions, the Court has accorded particular significance to who among the JBC Members signed the Motions and to

Chief Justice Sereno's act of administering the oath of office to three of the newly-appointed Sandiganbayan Associate Justices, including respondent Econg, in resolving the pending Motions of the JBC. However, in its Motion for Reconsideration-in-Intervention, the JBC now reveals that not all of its Members agree on the official position to take in the case of President Aquino's appointment of the six new Sandiganbayan Associate Justices. Thus, the position of the JBC on the clustering of the nominees for the six simultaneous vacancies for Sandiganbayan Associate Justice rests on shaky legal ground.

The JBC takes exception as to why the Court allowed the Petition at bar even when it did not strictly comply with the rules, as it was filed beyond the 60-day period for filing a petition for *certiorari*. The Court, in its Decision dated November 29, 2016, gave consideration to petitioners' assertion that they had to secure first official copies of the six short lists before they were able to confirm that President Aquino, in appointing the six new Sandiganbayan Associate Justices, actually disregarded the clustering of nominees into six separate short lists. While the Court is hard-pressed to extend the same consideration to the JBC which made no immediate effort to explain its failure to timely question or challenge the appointments of respondents Econg and Musngi as Sandiganbayan Associate Justices whether before the OP or the courts, the Court will nevertheless now allow the JBC intervention by considering the issues raised and arguments adduced in the Motion for Reconsideration and Motion for Reconsideration-in-Intervention of the JBC in the interest of substantial justice.

Incidentally, it should be mentioned that the JBC reproaches the Court for supposedly hurrying the promulgation of its Decision on November 29, 2016 in anticipation of the impending vacancies in the Supreme Court due to the retirements of Associate Justices Perez and Brion in December 2016. On the contrary, it appears that it was the JBC which hurriedly proceeded with the two separate publications on August 4, 2016 and August 18, 2016 of the opening of the application for the aforesaid vacancies, respectively, which was contrary to previous practice,

even while the issue of clustering was set to be decided by the Court. Moreover, a scrutiny of the process the Petition went through before its promulgation negates any haste on the part of the Court. Bear in mind that the Petition at bar was filed on May 17, 2016 and petitioners' Reply, the last pleading allowed by the Court in this case, was filed on August 3, 2016. The draft *ponencia* was calendared in the agenda of the Supreme Court *en banc*, called again, and deliberated upon several times before it was actually voted upon on November 29, 2016. Indeed, it appears that it was the JBC which rushed to release the separate short lists of nominees for the said Supreme Court vacancies despite knowing the pendency of the instant Petition and its own filing of a Motion for Intervention herein on November 28, 2016. The JBC went ahead with the release of separate short lists of nominees for the posts of Supreme Court Associate Justice vice retired Associate Justices Perez and Brion on December 2, 2016 and December 9, 2016, respectively.

Even if the Court allows the intervention of the JBC, as it will now do in the case at bar, the arguments of the JBC on the merits of the case fail to persuade the Court to reconsider its Decision dated November 29, 2016.

a. The clustering of nominees for the six vacancies in the Sandiganbayan by the JBC impaired the President's power to appoint members of the Judiciary and to determine the seniority of the newly-appointed Sandiganbayan Associate Justices.

Noteworthy is the fact that the Court unanimously voted that in this case of six simultaneous vacancies for Sandiganbayan Associate Justice, the JBC acted beyond its constitutional mandate in clustering the nominees into six separate short lists and President Aquino did not commit grave abuse of discretion in disregarding the said clustering.

The JBC invokes its independence, discretion, and wisdom, and maintains that it deemed it wiser and more in accord with

Article VIII, Section 9 of the 1987 Constitution to cluster the nominees for the six simultaneous vacancies for Sandiganbayan Associate Justice into six separate short lists. The independence and discretion of the JBC, however, is not without limits. It cannot impair the President's power to appoint members of the Judiciary and his statutory power to determine the seniority of the newly-appointed Sandiganbayan Associate Justices. The Court cannot sustain the strained interpretation of Article VIII, Section 9 of the 1987 Constitution espoused by the JBC, which ultimately curtailed the President's appointing power.

In its Decision dated November 29, 2016, the Court ruled that the clustering impinged upon the President's appointing power in the following ways: The President's option for every vacancy was limited to the five to seven nominees in each cluster. Once the President had appointed a nominee from one cluster, then he was proscribed from considering the other nominees in the same cluster for the other vacancies. All the nominees applied for and were found to be qualified for appointment to any of the vacant Associate Justice positions in the Sandiganbayan, but the JBC failed to explain why one nominee should be considered for appointment to the position assigned to one specific cluster only. Correspondingly, the nominees' chance for appointment was restricted to the consideration of the one cluster in which they were included, even though they applied and were found to be qualified for all the vacancies. Moreover, by designating the numerical order of the vacancies, the JBC established the seniority or order of preference of the new Sandiganbayan Associate Justices, a power which the law (Section 1, paragraph 3 of Presidential Decree No. 1606[16]), rules

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[16] Sec. 1. *Sandiganbayan; composition; qualifications; tenure; removal and compensation.* – x x x

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The Presiding Justice shall be so designated in his commission and the other Justices shall have precedence according to the dates of their respective commissions , or, when the commissions of two or more of them shall bear the same date, according to the order in which their commissions have been issued by the President.

(Rule II, Section 1(b) of the Revised Internal Rules of the Sandiganbayan[17]), and jurisprudence (*Re: Seniority Among the Four Most Recent Appointments to the Position of Associate Justices of the Court of Appeals*[18]), vest exclusively upon the President.

b. Clustering can be used as a device to favor or prejudice a qualified nominee.

The JBC avers that it has no duty to increase the chances of appointment of every candidate it has adjudged to have met the minimum qualifications for a judicial post. The Court does not impose upon the JBC such duty, it only requires that the JBC gives all qualified nominees **fair and equal opportunity** to be appointed. The clustering by the JBC of nominees for simultaneous or closely successive vacancies in collegiate courts can actually be a device to favor or prejudice a particular nominee. A favored nominee can be included in a cluster with no other strong contender to ensure his/her appointment; or conversely, a nominee can be placed in a cluster with many strong contenders to minimize his/her chances of appointment.

Without casting aspersion or insinuating ulterior motive on the part of the JBC – which would only be highly speculative on the part of the Court – hereunder are different scenarios, using the very same circumstances and nominees in this case, to illustrate how clustering could be used to favor or prejudice a particular nominee and subtly influence President Aquino's appointing power, had President Aquino faithfully observed the clustering.

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[17] Sec. 1. *Composition of the Court and Rule on Precedence*. –

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(b) *Rule on Precedence* – The Presiding Justice shall enjoy precedence over the other members of the Sandiganbayan in all official functions. The Associate Justices shall have precedence according to the order of their appointments.

[18] *Supra* note 8.

The six nominees actually appointed by President Aquino as Sandiganbayan Associate Justices were the following:

VACANCY IN THE SANDIGANBAYAN	PERSON APPOINTED	SHORT LISTED FOR	FORMER POSITION HELD
16th Associate Justice	Michael Frederick L. Musngi	21st Associate Justice	Undersecretary for Special Concerns/ Chief of Staff of the Executive Secretary, OP, for 5 years
17th Associate Justice	Reynaldo P. Cruz	19th Associate Justice	Undersecretary, Office of the Executive Secretary, OP, for 4-1/2 years
18th Associate Justice	Geraldine Faith A. Econg	21st Associate Justice	Former Judge, Regional Trial Court (RTC), Cebu, for 6 years Chief of Office, Philippine Mediation Center (PMC)Philippine Judicial Academy (PHILJA)
19th Associate Justice	Maria Theresa V. Mendoza-Arcega	17th Associate Justice	Judge, RTC, Malolos Bulacan, for 10 years
20th Associate Justice	Karl B. Miranda	20th Associate Justice	Assistant Solicitor General, Office of the Solicitor General (OSG), for 15 years
21st Associate Justice	Zaldy V. Trespeses	18th Associate Justice	Judicial Staff Head, Office of the Chief Justice (OCJ), Supreme Court, for 2 years

It would be safe to say that all the aforementioned six nominees were strong contenders. If all six nominees were placed in the same cluster, then only one of them would have been actually appointed as Sandiganbayan Associate Justice and the other five could no longer be considered for the still unfilled vacancies. If then Atty. Zaldy V. Trespeses (Trespeses), Judicial Staff Head, OCJ, was included in the cluster with respondent Econg, PHILJA Chief of Office for PMC, and respondent Musngi, Undersecretary for Special Concerns and Chief of Staff of the Executive Secretary, OP, then he would have lesser chance of being appointed as he would have to vie for a single vacancy with two other strong contenders; and only one of the three would have been appointed. Evidently, the appointments to the six simultaneous vacancies for Sandiganbayan Associate Justice would have been different by simply jumbling the clusters of nominees. Even if we go back in history, had the JBC clustered the nominees for the posts vacated by Supreme Court Associate Justices Leonardo A. Quisumbing (Quisumbing) and Minita V. Chico-Nazario (Chico-Nazario), and if Associate Justices Perez and Jose Catral Mendoza (Mendoza) were together in the same cluster, then only one of them would have been appointed. Also, had the JBC clustered the nominees for the vacancies resulting from the retirements of Supreme Court Associate Justices Antonio Eduardo B. Nachura (Nachura) and Conchita Carpio Morales (Carpio Morales), and if Associate Justices Bienvenido L. Reyes (Reyes) and Estela M. Perlas-Bernabe (Perlas-Bernabe) were together in the same cluster, then the appointment of one of them would have already excluded the other.

c. There are no objective criteria, standards, or guidelines for the clustering of nominees by the JBC.

The problem is that the JBC has so far failed to present a legal, objective, and rational basis for determining which nominee shall be included in a cluster. Simply saying that it is the result of the deliberation and voting by the JBC for every vacancy is unsatisfactory. A review of the voting patterns by the JBC

Members for the six simultaneous vacancies for Sandiganbayan Associate Justice only raises more questions and doubts than answers. It would seem, to the casual observer, that the Chief Justice and the four regular JBC Members exercised block voting most of the time. Out of the 89 candidates for the six vacancies, there were a total of 37 qualified nominees spread across six separate short lists. Out of the 37 qualified nominees, the Chief Justice and the four regular JBC Members coincidentally voted for the same 28 nominees **in precisely the same clusters**, only varying by just one vote for the other nine nominees.

It is also interesting to note that all the nominees were listed only once in just one cluster, and all the nominees subsequently appointed as Sandiganbayan Associate Justice were distributed among the different clusters, except only for respondents Econg and Musngi. Was this by chance or was there already an agreement among the Chief Justice and the regular JBC Members to limit the nomination of a candidate to a specific cluster for one specific vacancy, thus, excluding the same candidate from again being nominated in a different cluster for another vacancy? It is understandable that the Chief Justice and the four regular JBC Members would agree on whom to nominate because their nominations were based on the qualifications of the candidates. What is difficult to comprehend is how they determined the distribution of the nominees to the different clusters in the absence of any criteria or standard to be observed in the clustering of nominees. This was never explained by the JBC in any of its Motions even when the issue of clustering is vital to this case. Resultantly, the Court also asks why were respondents Econg and Musngi nominated in a single cluster? And why was then Atty. Trespeses not included in the same cluster as respondents Econg and Musngi, or the clusters of then Undersecretary Reynaldo P. Cruz, RTC Judge Maria Theresa V. Mendoza-Arcega, or Assistant Solicitor General Karl B. Miranda? Furthermore, what criteria was used when Chief Justice Sereno and the other four regular JBC Members voted for then Atty. Trespeses for only one particular cluster, *i.e.*, for the 18th Sandiganbayan Associate Justice, and nowhere else? Atty. Trespeses did not receive any vote in the other clusters except

for the lone vote for him of an *ex officio* JBC Member for the vacancy for the 21st Sandiganbayan Associate Justice.

The Court emphasizes that the requirements and qualifications, as well as the powers, duties, and responsibilities are the same for all vacant posts in a collegiate court, such as the Sandiganbayan; and if an individual is found to be qualified for one vacancy, then he/she is found to be qualified for all the other vacancies – there are no distinctions among the vacant posts. It is improbable that the nominees expressed their desire to be appointed to only a specific vacant position and not the other vacant positions in the same collegiate court, when neither the Constitution nor the law provides a specific designation or distinctive description for each vacant position in the collegiate court. The JBC did not cite any cogent reason in its Motion for Reconsideration-in-Intervention for assigning a nominee to a particular cluster/vacancy. The Court highlights that without objective criteria, standards, or guidelines in determining which nominees are to be included in which cluster, the clustering of nominees for specific vacant posts seems to be at the very least, totally arbitrary. The lack of such criteria, standards, or guidelines may open the clustering to manipulation to favor or prejudice a qualified nominee.

d. There is technically no clustering of nominees for first and second level trial courts.

The Court further points out that its Decision dated November 29, 2016 only discussed vacancies in collegiate courts. The constant referral by the JBC to separate short lists of nominees for vacant judgeship posts in first and second level trial courts as proof of previous clustering is inapt. The separate short lists in such situations are technically not clustering as the vacancies happened and were announced at different times and candidates applied for specific vacancies, based on the inherent differences in the location and jurisdiction of the trial courts, as well as the qualifications of nominees to the same, hence, justifying a separate short list for each vacant post.

e. While clustering of nominees was observed in the nominations for vacancies in the Court of Appeals in 2015, it escaped scrutiny as the appointments to said vacancies were not challenged before the Court.

As an example of previous clustering in a collegiate court, the JBC attached to its Motion for Reconsideration-in-Intervention a transmittal letter dated August 17, 2015 of the JBC addressed to President Aquino, which divided the nominees into four clusters for the four vacancies for Court of Appeals Associate Justice. The JBC contends that during the deliberations on said nominations, the *ponente* and Supreme Court Associate Justice Velasco were both present as JBC consultants but did not raise any objection.

While it may be true that the JBC already observed clustering in 2015, it is still considered a relatively new practice, adopted only under Chief Justice Sereno's Chairmanship of the JBC. The clustering then escaped scrutiny as no party questioned the appointments to the said vacancies. The view of the consultants was also not solicited or requested by the JBC. The Court now observes that the vacancies for Court of Appeals Associate Justice in 2015 were not all simultaneous or closely successive, most of which occurring months apart, specifically, vice the late Associate Justice Michael P. Elbinias who passed away on November 20, 2014; vice retired Associate Justice Rebecca De Guia-Salvador, who opted for early retirement effective on January 31, 2015; vice Associate Justice Hakim S. Abdulwahid, who compulsorily retired on June 12, 2015; and vice Associate Justice Isaias P. Dicdican who compulsorily retired on July 4, 2015. Even so, the JBC published a single announcement for all four vacancies on March 15, 2015, with the same deadlines for submission of applications and supporting documents. This is in stark contrast to the two-week interval between the compulsory retirements of Supreme Court Associate Justices Perez and Brion on December 14, 2016 and December 29, 2016, respectively, for which the JBC still made separate

publications, required submission of separate applications, separately processed the applications, and submitted separate short lists. Additionally, it is noteworthy that the nominations for the four vacant posts of Court of Appeals Associate Justice were contained in a single letter dated August 17, 2015, addressed to President Aquino, through then Executive Secretary Paquito N. Ochoa, Jr., whereas in the case of the Sandiganbayan, the JBC submitted six separate letters, all dated October 26, 2015, transmitting one short list for each of the six vacancies. The separate letters of transmittal further reinforce the intention of the JBC to prevent the President from "cross-reaching" or disregarding the clustering of nominees for the six vacancies for Sandiganbayan Associate Justice and, thus, unduly limit the President's exercise of his power to appoint members of the Judiciary.

f. The separate short lists for the current vacancies in the Supreme Court are not in issue in this case, but has been brought up by the JBC in its Motion for Reconsideration-in-Intervention.

The Court takes the occasion herein to clarify that the application of its ruling in the Decision dated November 29, 2016 to the situation involving closely successive vacancies in a collegiate court may be properly addressed in an actual case which squarely raises the issue. It also bears to stress that the current vacancies in the Supreme Court as a result of the compulsory retirements of Associate Justices Perez and Brion are **not in issue in this case**, but has been brought to the fore by the JBC itself in its Motion for Reconsideration-in-Intervention. Therefore, the Court will refrain from making any pronouncements on the separate short lists of nominees submitted by the JBC to President Rodrigo Roa Duterte (Duterte) on December 2, 2016 and December 9, 2016 so as not to preempt the President's decision on how to treat the separate short lists of nominees for the two current vacancies in the Supreme Court. The Court will only address the statements made by the JBC

in relation to said short lists by reciting some relevant historical facts relating to the filling-up of previous vacancies in the Supreme Court.

The JBC avers that it had no choice but to submit separate short lists of nominees to President Duterte for the vacancies for Supreme Court Associate Justice vice Associate Justices Perez and Brion, who retired on December 14, 2016 and December 29, 2016, respectively, because there were different sets of applicants for each, with 14 applicants for the seat vacated by Associate Justice Perez and 17 applicants for the seat vacated by Associate Justice Brion. The situation is the own doing of the JBC, as the JBC announced the expected vacancies left by the compulsory retirements of Associate Justices Perez and Brion, which were merely two weeks apart, through two separately paid publications on August 4, 2016 and August 18, 2016, respectively, in newspapers of general circulation; invited the filing of separate applications for the vacancies with different deadlines; and separately processed the applications of candidates to the said vacancies. The JBC would inevitably end up with two different sets of nominees, one set for the position vacated by Justice Perez and another set for that vacated by Justice Brion, notwithstanding that the JBC undeniably found all nominees in both sets to be qualified to be appointed as Associate Justice of the Supreme Court, as they all garnered at least four votes.

There had been no similar problems in the past because the JBC jointly announced simultaneous or closely successive vacancies in the Supreme Court in a single publication, invited the filing by a candidate of a single application for all the vacancies on the same deadline, jointly processed all applications, and submitted a single list of qualified nominees to the President, thus, resulting in a simple, inexpensive, and efficient process of nomination. Such was the case when the JBC announced the two vacancies for Supreme Court Associate Justice following the retirements of Associate Justices Quisumbing and Chico-Nazario in 2009. Pertinent portions of the JBC publication are reproduced below:

The Judicial and Bar Council (JBC) announces the opening, for application or recommendation, of the: two (2) forthcoming vacant positions of **ASSOCIATE JUSTICE OF THE SUPREME COURT vice Hon. Leonardo A. Quisumbing and Hon. Minita V. Chico-Nazario**, who will compulsorily retire on 6 November and 5 December 2009, respectively, x x x

Applications or recommendation for the two (2) positions in the Supreme Court must be submitted not later than **28 September 2009** (Monday) x x x to the JBC Secretariat, 2nd Flr. Centennial Bldg., Supreme Court, Padre Faura St., Manila (Tel. No. 552-9512; Fax No. 552-9607; email address jbc_supreme court@yahoo.com.ph or jbc@sc.judiciary.gov.ph). Applicants or recommendees must submit six (6) copies of the following:

x x x x x x x x x

The JBC, then headed by Supreme Court Chief Justice Reynato S. Puno, submitted to President Gloria Macapagal-Arroyo (Macapagal-Arroyo) a single short list dated November 29, 2009 with a total of six nominees for the two vacancies for Supreme Court Associate Justice, from which, President Macapagal-Arroyo appointed Associate Justices Perez and Mendoza.

The JBC again announced the two vacancies for Supreme Court Associate Justice due to the retirements of Associate Justices Nachura and Carpio Morales, thus:

The Judicial and Bar Council (JBC) announces the opening, for application or recommendation, of the following positions:

1. **ASSOCIATE JUSTICE OF THE SUPREME COURT (vice Hon. Antonio Eduardo B. Nachura and Hon. Conchita Carpio Morales**, who will compulsorily retire on 13 and 19 June 2011, respectively);

x x x x x x x x x

Applications or recommendations for vacancies in nos. 1-3 must be filed on or before **28 March 2011 (Monday)** x x x to the JBC Secretariat, 2nd Flr. Centennial Bldg., Supreme Court, Padre Faura St., Manila (Tel. No. 552-9512; Fax No. 552-9598; email address jbc supremecourt@yahoo.com.ph. Those who applied before these vacancies were declared open must manifest in writing their interest

on or before the said deadline. In case of recommendations, the recommendees must signify their acceptance either in the recommendation letter itself or in a separate document.

New applicants or recommendees for positions in the appellate courts must submit the following on or before **4 April 2011 (Monday)** x x x:

x x x x x x x x x

The single short list dated June 21, 2011, submitted by the JBC, under the Chairmanship of Supreme Court Chief Justice Renato C. Corona, presented, for President Aquino's consideration, six nominees for the two vacant posts of Supreme Court Associate Justice, with President Aquino subsequently appointing Associate Justices Reyes and Perlas-Bernabe.

How the new procedure adopted by the JBC of submitting two separate lists of nominees will also affect the seniority of the two Supreme Court Associate Justices to be appointed to the current vacancies is another issue that may arise because of the new JBC procedure. Unlike the present two separate lists of nominees specifying the vacant post to which they are short-listed for appointment, the short list of nominees submitted by the JBC before did not identify to which of the vacant positions, when there are more than one existing vacancies, a qualified candidate is nominated to as there was only one list of nominees for all vacancies submitted to the President. Correspondingly, the appointment papers issued by the President, as in the cases of Supreme Court Associate Justices Perez, Mendoza, Reyes, and Perlas-Bernabe, did not specify the particular vacant post to which each of them was appointed. The appointment papers of the afore-named Supreme Court Associate Justices were all similarly worded as follows:

Pursuant to the provisions of existing laws, you are hereby appointed **ASSOCIATE JUSTICE OF THE SUPREME COURT**.

By virtue hereof, you may qualify and enter upon the performance of the duties and functions of the office, furnishing this Office and the Civil Service Commission with copies of your Oath of Office.

As earlier stated, the Court makes no ruling on the above-mentioned divergence between the procedures in the nomination for existing vacancies in the Supreme Court followed by the JBC before and by the present JBC as it may be premature to do so and may prejudge whatever action President Duterte may take on the two separate short lists of nominees for the current Supreme Court vacancies which were submitted by the JBC.

g. The designation by the JBC of numbers to the vacant Sandiganbayan Associate Justice posts encroached on the President's power to determine the seniority of the justices appointed to the said court.

The JBC contends in its Motion for Reconsideration-in-Intervention that its individual members have different reasons for designating numbers to the vacant Sandiganbayan Associate Justice posts. The varying reason/s of each individual JBC Members raises the concern whether they each fully appreciated the constitutional and legal consequences of their act, *i.e.*, that it encroached on the power, solely vested in the President, to determine the seniority of the justices appointed to a collegiate court. Each of the six short lists submitted by the JBC to President Aquino explicitly stated that the nominees were for the Sixteenth (16th), Seventeenth (17th), Eighteenth (18th), Nineteenth (19th), Twentieth (20th), and Twenty-First (21st) Sandiganbayan Associate Justice, respectively; and on the faces of said short lists, it could only mean that President Aquino was to make the appointments in the order of seniority pre-determined by the JBC, and that nominees who applied for any of the vacant positions, requiring the same qualifications, were deemed to be qualified to be considered for appointment only to the one vacant position to which his/her cluster was specifically assigned. Whatever the intentions of the individual JBC Members were, they cannot go against what has been clearly established by

law,[19] rules,[20] and jurisprudence.[21] In its Decision dated November 29, 2016, the Court already adjudged that:

> Evidently, based on law, rules, and jurisprudence, the numerical order of the Sandiganbayan Associate Justices cannot be determined until their actual appointment by the President.
>
> It also bears to point out that part of the President's power to appoint members of a collegiate court, such as the Sandiganbayan, is the power to determine the seniority or order of preference of such newly appointed members by controlling the date and order of issuance of said members' appointment or commission papers. By already designating the numerical order of the vacancies, the JBC would be establishing the seniority or order of preference of the new Sandiganbayan Associate Justices even before their appointment by the President and, thus, unduly arrogating unto itself a vital part of the President's power of appointment.[22]

It is also not clear to the Court how, as the JBC avowed in its Motion for Reconsideration, the clustering of nominees for simultaneous vacancies in collegiate courts into separate short lists can rid the appointment process to the Judiciary of political pressure; or conversely, how the previous practice of submitting a single list of nominees to the President for simultaneous vacancies in collegiate courts, requiring the same qualifications, made the appointment process more susceptible to political pressure. The 1987 Constitution itself, by creating the JBC and requiring that the President can only appoint judges and Justices from the nominees submitted by the JBC, already sets in place the mechanism to protect the appointment process from political pressure. By arbitrarily clustering the nominees for appointment to the six simultaneous vacancies for Sandiganbayan

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[19] Section 1, paragraph 3 of Presidential Decree No. 1606, *supra* note 16.

[20] Rule II, Section 1(b) of the Revised Internal Rules of the Sandiganbayan, *supra* note 17.

[21] *Re: Seniority Among the Four Most Recent Appointments to the Position of Associate Justices of the Court of Appeals*, *supra* note 8.

[22] *Rollo*, p. 238.

Associate Justice into separate short lists, the JBC influenced the appointment process and encroached on the President's power to appoint members of the Judiciary and determine seniority in the said court, beyond its mandate under the 1987 Constitution. As the Court pronounced in its Decision dated November 29, 2016, the power to recommend of the JBC cannot be used to restrict or limit the President's power to appoint as the latter's prerogative to choose someone whom he/she considers worth appointing to the vacancy in the Judiciary is still paramount. As long as in the end, the President appoints someone nominated by the JBC, the appointment is valid, and he, not the JBC, determines the seniority of appointees to a collegiate court.

Finally, the JBC maintains that it is not bound by the Decision dated November 29, 2016 of the Court in this case on the ground that it is not a party herein. The JBC prays in its Motion for Reconsideration and Motion for Reconsideration-in-Intervention, among other reliefs and remedies, for the Court to reverse its ruling in the Decision dated November 29, 2016 denying the Motion for Intervention of the JBC in the present case. However, **the Court has now practically allowed the intervention of the JBC in this case,** by taking into consideration the issues raised and arguments adduced in its Motion for Reconsideration and Motion for Reconsideration-in-Intervention, but which the Court found to be unmeritorious.

To recapitulate, the Petition at bar challenged President Aquino's appointment of respondents Econg and Musngi as Sandiganbayan Associate Justices, which disregarded the clustering by the JBC of the nominees for the six simultaneous vacancies in said collegiate court into six separate short lists. The Court ultimately decreed in its Decision dated November 29, 2016 that:

> President Aquino validly exercised his discretionary power to appoint members of the Judiciary when he disregarded the clustering of nominees into six separate shortlists for the vacancies for the 16th, 17th, 18th, 19th, 20th, and 21st Sandiganbayan Associate Justices. President Aquino merely maintained the well-established practice, consistent with the paramount Presidential constitutional prerogative, to appoint the six new Sandiganbayan Associate Justices from the

37 qualified nominees, as if embodied in one JBC list. This does not violate Article VIII, Section 9 of the 1987 Constitution which requires the President to appoint from a list of at least three nominees submitted by the JBC for every vacancy. To meet the minimum requirement under said constitutional provision of three nominees per vacancy, there should at least be 18 nominees from the JBC for the six vacancies for Sandiganbayan Associate Justice; but the minimum requirement was even exceeded herein because the JBC submitted for the President's consideration a total of 37 qualified nominees. All the six newly appointed Sandiganbayan Associate Justices met the requirement of nomination by the JBC under Article VIII, Section 9 of the 1987 Constitution. Hence, the appointments of respondents Musngi and Econg, as well as the other four new Sandiganbayan Associate Justices, are valid and do not suffer from any constitutional infirmity.[23]

The declaration of the Court that the clustering of nominees by the JBC for the simultaneous vacancies that occurred by the creation of six new positions of Associate Justice of the Sandiganbayan is unconstitutional was only incidental to its ruling that President Aquino is not bound by such clustering in making his appointments to the vacant Sandiganbayan Associate Justice posts. Other than said declaration, the Court did not require the JBC to do or to refrain from doing something insofar as the issue of clustering of the nominees to the then six vacant posts of Sandiganbayan Associate Justice was concerned.

As for the other new rules and practices adopted by the JBC which the Court has taken cognizance of and docketed as a separate administrative matter (*viz.*, ***Item No. 2***: the deletion or non-inclusion in JBC No. 2016-1, or the Revised Rules of the Judicial and Bar Council, of Rule 8, Section 1 of JBC-009; and ***Item No. 3***: the removal of incumbent Senior Associate Justices of the Supreme Court as consultants of the Judicial and Bar Council, referred to in pages 45 to 51 of the Decision dated November 29, 2016), the JBC is actually being given the opportunity to submit its comment and be heard on the same. The administrative matter was already raffled to another *ponente*, thus, any incident concerning the same should be consolidated in the said administrative matter.

[23] *Id*. at 242.

Regarding the Separate Opinion of Associate Justice Caguioa, it must be pointed out that he has conceded that the President did not commit an unconstitutional act in "disregarding the clustering done by the JBC" when he chose Associate Justices of the Sandiganbayan "outside" of the "clustered" lists provided by the JBC.

WHEREFORE, premises considered, except for its motion/prayer for intervention, which the Court has now granted, the Motion for Reconsideration (with Motion for the Inhibition of the *Ponente*) and the Motion for Reconsideration-in-Intervention (Of the Decision dated 29 November 2016) of the Judicial and Bar Council are **DENIED** for lack of merit.

Nota bene: The Court has agreed not to issue a ruling herein on the separate short lists of nominees submitted by the Judicial and Bar Council to President Rodrigo Roa Duterte for the present vacancies in the Supreme Court resulting from the compulsory retirements of Associate Justices Jose P. Perez and Arturo D. Brion because these were not in issue nor deliberated upon in this case, and in order not to preempt the decision the President may take on the said separate short lists in the exercise of his power to appoint members of the Judiciary under the Constitution.

SO ORDERED.

Carpio, Peralta, Bersamin, del Castillo, Mendoza, and *Jardeleza, JJ.,* concur.

Velasco, Jr., J., concurs in the result, see separate opinion. The November 29, 2016 Decision does not apply to closely successive vacancies like those created with the retirement of Justices Brion and Perez.

Perlas-Bernabe, J., concurs in the result, and also joins the separate opinion of *J.* Leonen.

Leonen, J., concurs in the result, see separate opinion.

Caguioa, J., see separate opinion.

Sereno, C.J., no part.

Reyes, J., on leave.

SEPARATE OPINION

VELASCO, JR., *J.*:

I agree that there is no compelling reason for Associate Justice Teresita J. Leonardo-de Castro (Justice Leonardo-de Castro) to inhibit in the case at bar. Justice Leonardo-de Castro explained at length the extent of her participation, or non-participation, in the closed door meetings of the JBC when she was still a consultant thereof. She is not privy to the decision of the JBC to approve the rule on the clustering of nominees, much less to its implementation.

I likewise concur with the majority that the Judicial and Bar Council (JBC) should be allowed to intervene in the present proceeding. The nullification of the JBC's act of clustering the nominees for the Sandiganbayan vacancies was a precondition before the Court could have upheld the validity of the subject appointments. In fact, this was where the Office of the Solicitor General (OSG) primarily anchored its defenses. I cannot, therefore, agree that "[t]he declaration of the Court that the clustering of nominees by the JBC for simultaneous vacancies in the collegiate court is unconstitutional was only **incidental** to its ruling."[1] On the contrary, it is, as it remains to be, the very core of the controversy. It thus behooved this Court to hear the counter-arguments of the JBC against the OSG's contention.

Beyond quibble then is that the JBC is clothed with legal interest to take part in this case. The Court's attempt at curbing the august body's practice is more than palpable in the language of the Decision. The *fallo* of the adverted ruling reads:

> **WHEREFORE**, premises considered, the Court **DISMISSES** the instant Petition for *Quo Warranto* and *Certiorari* and Prohibition for lack of merit. The Court **DECLARES** the clustering of nominees by the Judicial and Bar Council **UNCONSTITUTIONAL**, and the appointments of respondents Associate Justices Michael Frederick

[1] Draft Resolution, p. 17.

L. Musngi and Geraldine Faith A. Econg, together with the four other newly-appointed Associate Justices of the Sandiganbayan as **VALID**. The Court further **DENIES** the Motion for Intervention of the Judicial and Bar Council in the present Petition, but **ORDERS** the Clerk of Court *En Banc* to docket as a separate administrative matter the new rules and practices of the Judicial and Bar Council which the Court took cognizance of in the preceding discussion as ***Item No. 2***: the deletion or non-inclusion in JBC No. 2016-1, or the Revised Rules of the Judicial and Bar Council, of Rule 8, Section 1 of JBC-009; and ***Item No. 3***: the removal of incumbent Senior Associate Justices of the Supreme Court as consultants of the Judicial and Bar Council, referred to in pages 35-40 of this Decision. The Court finally **DIRECTS** the Judicial and Bar Council to file its comment on said Item Nos. 2 and 3 within thirty (30) days from notice.

SO ORDERED.

I am amenable to the afore-quoted decretal portion of the November 29, 2016 Decision but, regrettably, I cannot fully agree with the following statement made in the discussion therein:[2]

> **The ruling of the Court in this case shall similarly apply to the situation wherein there are closely successive vacancies in a collegiate court, to which the President shall make appointments on the same occasion, regardless of whether the JBC carried out combined or separate application process/es for the vacancies**. The President is not bound by the clustering of nominees by the JBC and may consider as one the separate shortlists of nominees concurrently submitted by the JBC. (emphasis added)

This sweeping statement automatically makes an issue on how future nominations and appointments are to be made. It is not a mere *pro hac vice* ruling on the particular appointments in issue herein, but precedent setting. Preferably, the Court ought to take up the issue on whether or not the clustering of nominees is valid for closely successive appointments when there is an actual justiciable controversy on the matter. However, the Court's power of supervision over the JBC,[3] to my mind, permits us to

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[2] November 29, 2016, p. 32

[3] Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as *ex officio*

grab the bull by the horns and resolve the boundaries of the doctrine set herein to serve as a guide not only to the JBC but also to the incumbent President.

My misgivings on the above declaration stem from the fact that separate application processes would yield varying number of applicants and different persons applying. It would then be erroneous to treat as one group the applicants who vied for different posts. The shortlists for the posts vacated by Associate Justices Jose P. Perez (Justice Perez) and Arturo D. Brion (Justice Brion) would assist in illustrating this point:[4]

Shortlist for the position vacated by Associate Justice Jose P. Perez	Shortlist for the position vacated by Associate Justice D. Brion
Reyes, Jose Jr. C. – 7 votes	Carandang, Rosmari D. – 6 votes
Bruselas, Apolinario Jr. D. – 5 votes	Bruselas, Apolinario Jr. D. – 5 votes
Dimaampao, Japar B. – 5 votes	Reyes, Jose Jr. C. – 4 votes
Martires, Samuel R. – 5 votes	Dimaampao, Japar B. – 4 votes
Reyes, Andres Jr. B. – 4 votes	Lazaro-Javier, Amy C. – 4 votes
	Tijam, Noel G. – 4 votes
	Ventura-Jimeno, Rita Linda S. – 4 votes

If I may convey some possible permutations and a few observations:

First, the ruling of majority permits the commingling of shortlists and would automatically render Hon. Amy C. Lazaro-Javier, Associate Justice of the Court of Appeals, a nominee for the position vacated by Associate Justice Jose P. Perez even though she only applied for the post vacated by Associate Justice

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Chairman, the Secretary of Justice, and a representative of the Congress as *ex officio* Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector. xxx

[4] Motion for Reconsideration-in-Intervention, pp. 20-21.

Arturo D. Brion. This is an anomaly since Hon. Lazaro-Javier only applied for the latter post.

Noteworthy is that the application process for the two vacancies was separate and distinct. The JBC announced on August 4, 2016 that it will be receiving applications and nominations for the post to be vacated by Justice Perez until September 20, 2016. In contrast, the call for applications and nominations for the post vacated by Justice Brion was published on August 18, 2016, with the deadline set on October 4, 2016.

From September 21, 2014 to October 4, 2016, the JBC was then only receiving applications nominations for the Supreme Court post vacated by Justice Brion. Had Hon. Lazaro-Javier filed her application/nomination during this period, then she could not, by any stretch of the imagination or legalese, be considered an applicant, let alone a nominee, for the post vacated by Justice Perez.

Second, the wording of the decision may likewise result in the appointment of one who did not get the necessary minimum number of votes. Sec. 2, Rule 8 of JBC No. 2016-01, otherwise known as the JBC Rules, provides:

RULE 8
VOTING REQUIREMENTS

x x x x x x x x x

Sec. 2. Votes Required For Inclusion as Nominees. – For applicants to be considered for nomination, they should obtain the affirmative vote of at least four (4) Members of the Council.

In this case, Hon. Andres Reyes, Jr. applied for both vacant positions, but obtained the required number of votes and was included in the shortlist only for the post vacated by Justice Perez. There were 14 applicants/nominees for the said post as compared to the 17 for the post vacated by Justice Brion. Competition may have been tougher in the application process for Justice Brion's replacement, resulting in Hon. Reyes not reaching the voting threshold. Whatever the reason for his non-inclusion in the shortlist for Justice Brion's post may be, the

fact remains that he could not be appointed for the same. He could only qualify as a nominee for the post vacated by Justice Perez.

Third, precisely because there were two application processes, the voting for the nominees was conducted separately. Thus, it was possible for applicants/nominees for both vacant positions to be voted upon twice by the same member of the JBC. The following example provided by the JBC is telling:[5]

Table 1. Filled-up Ballot of Member X (where maximum no. of choices is 8)

Applicants for Vacancy (vice J. Perez)		Applicants for Vacancy (vice J. Brion)	
A	1	A	
B		B	
C		C	
D	2	D	1
E		E	
F	3	F	2
G	4	G	3
H		H	
I	5	I	4
J		J	
K	6	K	5
L		L	
M	7	M	6
N	8	N	7
		O	
		P	
		Q	8

As couched, the November 29, 2016 Decision would affect the manner by which the JBC members cast their votes: Should

[5] Motion for Reconsideration-in-Intervention, pp. 20-21.

they be entitled to only one ballot since the clustered shortlists are to be considered as one comprehensive shortlist? Should they set a guideline in determining the maximum number of choices according to the number of vacancies to be filled?

These are legitimate concerns that would arise should the Court sustain its Decision. These contingencies should have been clearly addressed before we refrained from limiting the application of the ruling *pro hac vice* and instead ruled that it may validly and similarly be invoked in situations "wherein there are closely successive vacancies in a collegiate court, xxx regardless of whether the JBC carried out combined or separate application process/es for the vacancies."[6]

As a final word, the Court is well aware that the treatment of the vacancies that resulted from the mandatory retirements of Justices Perez and Brion is capable of repetition to those from the retirements of Associate Justices Jose Catral Mendoza and Bienvenido L. Reyes on July 6, 2017 and August 13, 2017, respectively. We must then be prudent in resolving this collateral issue before the Court is hounded by controversies surrounding the legitimacy of the succeeding appointees to the Court.

The foregoing premises considered, I hereby register my vote to **PARTIALLY GRANT** the instant Motion for Reconsideration-in-Intervention. Although the unconstitutionality of the clustering is sustained, the application of the doctrine should be limited to simultaneous vacancies in collegiate courts, not to closely successive vacancies thereto.

SEPARATE OPINION

LEONEN, *J.*:

I concur in the result insofar as the finding that respondents did not gravely abuse their discretion in making appointments to the Sandiganbayan as all six vacancies were opened for the first time. I do not find any reasonable basis to cluster nominees

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[6] November 29, 2016 Decision.

in this case, where the law created simultaneous new vacancies for a collegial court. I agree with the *ponencia* that future vacancies for collegial appellate courts and this Court, are not at issue in this case. Hence, this Court should rule on the issues as it does not render advisory opinions.

I likewise concur in the *ponencia's* denial of the Motion for Inhibition filed by the Judicial and Bar Council. This Court, in its Internal Rules, provided the grounds[1] on which a member of the Court must inhibit himself or herself from participating in the resolution of the case, and none of the cited reasons apply to the *ponente*. I am convinced that there is no reason for the *ponente* to voluntarily inhibit herself from resolving or participating in this case.

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[1] S. CT. INT. RULES, RULE 8, Sec. 1 provides:

Rule 8, Section 1. *Grounds for Inhibition* - A Member of the Court shall inhibit himself or herself from participating in the resolution of the case for any of these and similar reasons:

(a) the Member of the Court was the *ponente* of the decision or participated in the proceedings in the appellate or trial court;

(b) the Member of the Court was counsel, partner or member of law firm that is or was the counsel in the case subject to Section 3(c) of this rule;

(c) the Member of the Court or his or her spouse, parent or child is pecuniarily interested in the case;

(d) the Member of the Court is related to either party in the case within the sixth degree of consanguinity or affinity, or to an attorney or any member of a law firm who is counsel of record in the case within the fourth degree of consanguinity or affinity;

(e) the Member of the Court was executor, administrator, guardian or trustee in the case; and

(f) the Member of the Court was an official or is the spouse of an official or former official of a government agency or private entity that is a party to the case, and the Justice or his or her spouse has reviewed or acted on any matter relating to the case.

A Member of the Court may in the exercise of his or her sound discretion, inhibit himself or herself for a just or valid reason other than any of those mentioned above.

The inhibiting Member must state the precise reason for the inhibition.

The *ponente* has adequately explained that she was neither privy nor consulted by the Judicial and Bar Council on the move to cluster the applicants to the newly created Sandiganbayan positions into six (6) separate shortlists.[2]

I see no reason to doubt the *ponente's* statement of impartiality. In the years that I have worked alongside the *ponente*, I have personally witnessed her unblemished character and unwavering commitment to upholding the rule of law. Historically, her moral compass has never waned. I have no reason to doubt her impartiality in this case.

However, the Judicial and Bar Council should be allowed to intervene in the case. As the party who committed the act of clustering the Sandiganbayan applicants—an act that was eventually declared unconstitutional—the Judicial and Bar Council clearly has a legal interest in the matter under litigation. Without the participation of the Judicial and Bar Council, the doctrine in this case will only be about the discretion of the President when there are simultaneous vacancies in newly created divisions of a collegial court. This policy should not extend to other vacancies caused by retirements in the future.

Nonetheless, I reiterate that the Decision[3] dated November 29, 2016 only affects collegial bodies such as the Sandiganbayan, when there are simultaneous vacancies. When there are successive vacancies in collegial courts, such as what happened in this Court, with the recent retirement of Associate Justices Jose P. Perez (Associate Justice Perez) and Arturo D. Brion (Associate Justice Brion), there may be valid reasons for the submission of two (2) separate shortlists to the President. However, again, that is not at issue in this case.

On November 16, 2016, the Judicial and Bar Council interviewed the following candidates for the position of Supreme

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[2] Resolution (G.R. No. 224302), pp. 5-6.

[3] *Aguinaldo v. Aquino*, G.R. No. 224302, November 29, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/224302.pdf> [Per *J.* Leonardo-De Castro, *En Banc*].

Court Associate Justice to replace Associate Justice Perez, who compulsorily retired on December 14, 2016:

1. **RUEDA-ACOSTA**, Persida V.
2. **VENTURA-JIMENO**, Rita Linda S.
3. **APAO-ADLAWAN**, Rowena M.
4. **DIMAAMPAO**, Japar B.

. . . . . .

1. **MARTIRES**, Samuel R.
2. **PARAS**, Ricardo III., V. (also a candidate for the Sandiganbayan)
3. **TIJAM**, Noel G.[4] (Emphasis in the original)

The following were also candidates for the position of Supreme Court Associate Justice (to replace Associate Justice Perez), although they were no longer interviewed because their previous interviews were still valid:

1. **BRUSELAS**, Apolinario Jr., D.
2. **CARANDANG**, Rosmari D.
3. **CRUZ**, Stephen C.
4. **DAWAY**, Reynaldo B.
5. **QUIROZ**, Alex L.
6. **REYES**, Andres Jr., B.
7. **REYES**, Jose Jr., C.[5] (Emphasis in the original)

On November 17, 2016, the Judicial and Bar Council interviewed the following candidates for the position of Supreme Court Associate Justice to replace Associate Justice Brion, who compulsorily retired on December 29, 2016:

1. **BORJA**, Romulo V.
2. **LAZARO-JAVIER**, Amy C.
3. **SAN PEDRO**, Joseph P.[6] (Emphasis in the original)

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[4] Judicial and Bar Council, Announcement dated October 20, 2016 <http://jbc.judiciary.gov.ph/announcements/2016/Announcement_SC%20Public%20Int%20and%20LEB%20Vacancies_10-20-16.pdf> (visited February 6, 2017).

[5] *Id*.

[6] Judicial and Bar Council, Announcement dated October 28, 2016 <http://jbc.judiciary.gov.ph/announcements/2016 Announcement_SC%20Public%20Int_Justice%20Brion_10-28-16.pdf> (visited February 6, 2017).

The following candidates were likewise considered for the position vacated by Associate Justice Brion:

1. **APAO-ADLAWAN**, Rowena M.
2. **DIMAAMPAO**, Japar B.
3. **MARTIRES**, Samuel R.
4. **PARAS**, Ricardo III., V.
5. **RUEDA-ACOSTA**, Persida V.
6. **TIJAM**, Noel G.
7. **VENTURA-JIMENO**, Rita Linda S.

. . . . . .

1. **BRUSELAS**, Apolinario Jr., D.
2. **CARANDANG**, Rosmari D.
3. **CRUZ**, Stephen C.
4. **DAWAY**, Reynaldo B.
5. **QUIROZ**, Alex L.
6. **REYES**, Andres Jr., B.
7. **REYES**, Jose Jr., C.[7] (Emphasis in the original)

On December 2, 2016, the Judicial and Bar Council forwarded to President Rodrigo Roa Duterte (President Duterte) the following nominations for the position of Supreme Court Associate Justice (to replace Associate Justice Perez):

1.	REYES, Jose Jr. C.	-	7 votes
2.	BRUSELAS, Apolinario Jr. D.	-	5 votes
3.	DIMAAMPAO, Japar B.	-	5 votes
4.	MARTIRES, Samuel R.	-	5 votes
5.	REYES, Andres Jr. B.	-	4 votes[8]

One (1) week later, on December 9, 2016, the Judicial and Bar Council forwarded to President Duterte a second shortlist for the position of Supreme Court Associate Justice (to replace Associate Justice Brion) with the following nominees:

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[7] *Id.*

[8] Judicial and Bar Council, letter dated December 2, 2016 <http://jbc.judiciary.gov.ph/announcements/2016/Shortlist_SC-Perez_12-2-16.pdf> (visited February 6, 2017).

1.	CARANDANG, Rosmari D.	-	6 votes
2.	BRUSELAS, Apolinario, Jr. D.	-	5 votes
3.	REYES, Jose, Jr. C.	-	5 votes
4.	DIMAAMPAO, Japar B.	-	4 votes
5.	LAZARO-JAVIER, Amy C.	-	4 votes
6.	TIJAM, Noel G.	-	4 votes
7.	VENTURA-JIMENO, Rita Linda S.	-	4 votes[9]

Although the two situations appear similar, in that the Judicial and Bar Council submitted two separate shortlists for the two vacancies in this Court and six separate shortlists for the six vacancies in the Sandiganbayan, the similarity ends there. The two shortlists for this Court were for the two vacancies brought about by the mandatory retirement of two Associate Justices on two separate dates. Further, applicants such as Romulo V. Borja, Amy C. Lazaro-Javier, and Joseph P. San Pedro opted to apply only for the position vacated by Associate Justice Brion, while the other candidates applied for both vacancies.

In comparison, the applicants for the Sandiganbayan applied for all six vacancies. From September 28, 2015 to October 13, 2015, the Judicial and Bar Council interviewed the following candidates for the six newly created positions of Sandiganbayan Associate Justice:

28 September 2015 (Monday)

9:00 a.m. – 12:00 noon	**2:00 – 5:00 p.m.**
1. **BASCOS-SARABIA**, Ma. Rita A.	1. **ALAMEDA**, Elmo M.
2. **BERNAD**, Ana Celeste P.	2. **ALARCON-LEONES**, Maria Lourdes
3. **BITON**, Lily V.	3. **ALHAMBRA**, Reynaldo A.
4. **CALO**, Ofelia L.	4.**ROMERO-MAGLAYA**, Rosanna Fe

29 September 2015 (Tuesday)

9:00 a.m. – 12:00 noon	**2:00 – 5:00 p.m.**
1. **CARILLO**, Edwin M.	1.**ALISUAG**, Tita B.

[9] Judicial and Bar Council, letter dated December 9, 2016 <http://jbc.judiciary.gov.ph/announcements/2016/Shortlist_SC-Brion_12-9-16.pdf> (visited February 6, 2017).

2. **CRUZ**, Reynaldo P.
3. **SANTOS**, Efren G.

2. **CASTILLO-MARIGOMEN**, Evangeline C.
3. **CORPUS-MAÑALAC**, Maryann E.
4. **CRUZ-MANGROBANG**, Ma. Celestina C.

30 September 2015 (Wednesday)

9:00 a.m. – 12:00 noon	**2:00 – 5:00 p.m.**
1. **RAMOS**,Renan E.	1. **DE ALBAN**, Isaac R.
2. **DIZON**, Ma. Antonia Edita C.	2. **FALCIS**, Rudiger II G.
3. **POCO-DESLATE**, Esperanza Isabel E	3. **FERNANDEZ**, Bernelito R.

01 October 2015 (Thursday)

9:00 a.m. – 12:00 noon	**2:00 – 5:00 p.m.**
1. **GONZALES**, Teodora R.	1. **JORGE-WAGAN**, Wilhelmina B.
2. **JACINTO**, Bayani H.	2. **POZON**, Benjamin T.
3**. KALLOS**, Robert E.	3. **REYES**, Felix P.
4.**TURINGAN-SANCHEZ**,Rowena	

02 October 2015 (Friday)

9:00 a.m. – 12:00 noon	**2:00 – 5:00 p.m.**
1. **MACARAIG**, Virgilio V.	1. **APAO-ADLAWAN**, Rowena
2. **ARETA**, Juanita G.	2. **MENDOZA-ARCEGA**, Maria Theresa
3.**MARIÑO-RICABLANCA**, Cynthia R.	3. **FERNANDEZ-BERNARDO**, Victoria C.
4. **TENORIO**, Buenaventura Albert Jr. J.	

05 October 2015 (Monday)

9:00 a.m. – 12:00 noon	**2:00 – 5:00 p.m.**
1. **MIRANDA**, Karl B.	1. **CORTEZ**, Luisito G.
2.**PAYOYO-VILLORDON**, Tita Marilyn	2. **DAMASING**, Henry B.
3. **TRESPESES**, Zaldy V.	3. **TAN**, Rowena Nieves A.
4. **Quimbo,** Rodolfo Noel S.	

06 October 2015 (Tuesday)

9:00 a.m. – 12:00 noon	**2:00 – 5:00 p.m.**
1. **SAGUN**, Fernando Jr. T.	1. **GENGOS**, Vicente Jr. L.

2. **GAMOTIN-NERY**, Evelyn J. 2. **HIDALGO**, Georgina D.
3. **MISLOS-LOJA**, Rosalyn D. 3. **MACARAIG-GUILLEN**, Marissa
4. **JUSTALERO**, Globert J.

07 October 2015 (Wednesday)

9:00 a.m. – 12:00 noon	**2:00 – 5:00 p.m.**
1. **GUANZON**, Frances V.	1. **SIO**, Primo Jr. G.
2. **MUSNGI**, Michael Frederick L.	2. **PAMPILO**, Silvino Jr. T.
3. **SANTOS**, Maria Bernardita	3. **PANGANIBAN**, Elvira DC

12 October 2015 (Monday)

9:00 a.m. – 12:00 noon

1. **AGUINALDO**, Philip A. **3. AVILA**, Edgar M. . . .
2. **BUNYI-MEDINA**, Thelma

13 October 2015 (Tuesday)

2:00 p.m. – 5:00 p.m.

1. **RIVERA-COLASITO**, Caroline 2. **MALENAB-HORNILLA**, Linda L.[10] (Emphasis in the original)

The following candidates had been previously interviewed by the Judicial and Bar Council and were also considered for the six newly created Sandiganbayan positions:

1. **ABUNDIENTE**, Arthur L.
2. **ACEBIDO**, Jeoffre W.
3. **AGANON**, Cesar L.
4. **ALARAS**, Selma P.
5. **ATAL-PAÑO**, Perpetua
6. **BAGUIO**, Celso O.
7. **BAUTISTA**, Jose Jr. L.
8. **BUSTOS-ONGKEKO**, Divinagracia G.
9. **CRUZ**, Danilo S.
10. **DE GUZMAN-ALVAREZ**, Ma. Theresa E.
16. **FIEL-MACARAIG**, Geraldine C.
17. **GUTIERREZ**, Alice C.
18. **MENEZ**, Martin T.
19. **PAUIG**, Vilma T.
20. **QUIMPO-SALE**, Angelene Mary W.
21. **ROBENIOL**, Gabriel T.
22. **ROXAS**, Ruben Reynaldo G.
23. **SANDOVAL**, Danilo S.
24. **SANTOS**, Edgar Dalmacio
25. **SOLIS-REYES**, Jocelyn

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[10] Judicial and Bar Council, Announcement dated September 11, 2015 <http://jbc.judiciary.gov.ph/announcements/2015/Announcement_9-11-15_Revised.pdf> (visited February 6, 2017).

11. **DOCENA**, Zaldy B.
12. **DOMINGO**, Lorna Navarro
13. **ECONG**, Geraldine Faith A.
14. **FERNANDEZ**, Teodoro C.
15. **FIDER-REYES**, Maria Amifaith S.
26. **SORIANO**, Andres Bartolome
27. **TACLA**, Esteban Jr. A.
28. **TIMBANG**, Salvador Jr. V.
29. **VIVERO**, Kevin Narce B.
30. **ZURAEK**, Merianthe Pacita M.[11] (Emphasis in the original)

None of the candidates applied for a particular Sandiganbayan division, yet on October 26, 2015, the Judicial and Bar Council grouped them in six (6) separate shortlists to correspond to the six (6) newly created Sandiganbayan divisions. The letters to Former President Benigno Simeon C. Aquino III (Former President Aquino) read:

1) For the 16th Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the SIXTEENTH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

1. AGUINALDO, PHILIP A. - 5 votes
2. ALHAMBRA, REYNALDO A. - 5 votes
3. CRUZ, DANILO S. - 5 votes
4. POZON, BENJAMIN T. - 5 votes
5. SANDOVAL, DANILO S. - 5 votes
6. TIMBANG, SALVADOR JR. - 5 votes

2) For the 17th Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the SEVENTEENTH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

1. CORPUS-MAÑALAC, MARYANN E. - 6 votes
2. MENDOZA-ARCEGA, MARIA THERESA V. - 6 votes

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[11] *Id.*

3. QUIMBO, RODOLFO NOEL S. - 6 votes
4. DIZON, MA. ANTONIA EDITA CLARIDADES - 5 votes
5. SORIANO, ANDRES BARTOLOME - 5 votes

3) For the 18th Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the EIGHTEENTH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

1. BAGUIO, CELSO O. - 5 votes
2. DE GUZMAN-ALVAREZ, MA. TERESA E. - 5 votes
3. FERNANDEZ, BERNELITO R. - 5 votes
4. PANGANIBAN, ELVIRA DE CASTRO - 5 votes
5. SAGUN, FERNANDO JR. T - 5 votes
6. TRESPESES, ZALDY V. - 5 votes

4) For the 19th Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the NINETEENTH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

1. GUANZON, FRANCES V. - 6 votes
2. MACARAIG-GUILLEN, MARISSA - 6 votes
3. CRUZ, REYNALDO P. - 5 votes
4. PAUIG, VILMA T. - 5 votes
5. RAMOS, RENAN E. - 5 votes
6. ROXAS, RUBEN REYNALDO G. - 5 votes

5) For the 20th Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the TWENTIETH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

1.	MIRANDA, KARL B.	- 6 votes
2.	ATAL-PAÑO, PERPETUA	- 5 votes
3.	BUNYI-MEDINA, THELMA	- 5 votes
4.	CORTEZ, LUISITO G.	- 5 votes
5.	FIEL-MACARAIG, GERALDINE C.	- 5 votes
6.	QUIMPO-SALE, ANGELENE MARY W.	- 5 votes
7.	JACINTO, BAYANI H.	- 4 votes

6) For the 21st Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the TWENTY-FIRST ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

1.	JORGE-WAGAN, WILHELMINA B.	- 6 votes
2.	ECONG, GERALDINE FAITH A.	- 5 votes
3.	ROMERO-MAGLAYA, ROSANNA FE	- 5 votes
4.	ZURAEK, MERIANTHE PACITA M.	- 5 votes
5.	ALAMEDA, ELMO M.	- 4 votes
6.	FERNANDEZ-BERNARDO, VICTORIA C.	- 4 votes
7.	MUSNGI, MICHAEL FREDERICK L.	- 4 votes[12]

Unlike the Sandiganbayan shortlists, some of the nominees for the Supreme Court vacancies appeared in both shortlists submitted to the President because they applied for both vacancies. This is a tacit recognition that these nominees qualified for both vacancies in this Court. This is contrary to the unique nature of the Sandiganbayan shortlists in this case, where the nominees were limited to only one shortlist each even if they qualified and applied for all of the vacancies.

With the forthcoming mandatory retirement of Associate Justice Bienvenido L. Reyes on July 6, 2017 and Associate Justice Jose C. Mendoza on August 13, 2017, this Court will have another set of vacancies. By the time the two positions

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[12] G.R. No. 224302, November 29, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/224302.pdf> 3–4 [Per *J.* Leonardo-De Castro, *En Banc*].

for Supreme Court Associate Justice become vacant, the Judicial and Bar Council might be composed of different members. The composition of the Judicial and Bar Council regularly changes because of the term-sharing arrangement practiced by the Senate and the House of Representatives. The Chair of the House of Representatives Committee on Justice sits as the Judicial and Bar Council ex-officio member from January to June, while the Chair of the Senate Committee on Justice and Human Rights takes over from July to December. Because of the different dates of the vacancies, as well as the possibly different composition of the Judicial and Bar Council, two different shortlists should be submitted.

In its Motion for Reconsideration, the Judicial and Bar Council explained that it merely followed Article VIII, Section 9[13] of the 1987 Constitution when it clustered into six separate shortlists the nominees for the six simultaneous vacancies for Sandiganbayan Associate Justice.[14] It contended that clustering was a practical solution meant to distinguish one shortlist from another and avoid confusion.[15]

The Judicial and Bar Council[16] was created under the 1987 Constitution. It was intended to be a fully independent constitutional body functioning as a check-and-balance on the President's power of appointment.

Before the existence of the Judicial and Bar Council, the executive and legislative branches had the exclusive prerogative

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[13] CONST., Art. VIII, Sec. 9 provides:

SECTION 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.

For the lower courts, the President shall issue the appointments within ninety days from the submission of the list.

[14] Resolution (G.R. No. 224302), pp. 13-14.

[15] *Id*. at 15.

[16] CONST., Art. VIII, Sec. 8.

of appointing members of the judiciary, subject only to confirmation by the Commission on Appointments. However, this appointment process was highly susceptible to political pressure and partisan activities and eventually prompted the need for a separate, competent, and independent body to recommend to the President nominees to the Judiciary.[17]

The Judicial and Bar Council is not merely a technical committee that evaluates the fitness and integrity of applicants in the Judiciary. It is a constitutional organ participating in the process that guides the direction of the Judiciary. Its composition represents a cross section of the legal profession, retired judges and Justices, and the Chief Justice. More than a technical committee, it has the power to examine the judicial philosophies of the applicants and make selections, which it submits to the President. The President may have the final discretion to choose, but he or she chooses only from that list.

This is the complex relationship mandated by the sovereign through the Constitution. It ensures judicial independence, checks and balances on the Judiciary, and assurance for the rule of law.

In the proper actual case, the exact metes and bounds of the discussion of the Judicial and Bar Council can be determined. Here, however, the President did not abuse his discretion when he decided that there was no reason to cluster the applicants for the Sandiganbayan vacancies.

As a collegial court, the Sandiganbayan seats members who equally share power and sit in divisions of three (3) members each. The numerical designation of each division only pertains to the seniority or order of precedence based on the date of appointment. The Rule on Precedence is in place primarily for the orderly functioning of the Sandiganbayan, as reflected in Rule II, Section 1 of the Revised Internal Rules of the Sandiganbayan:

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[17] *Chavez v. Judicial and Bar Council*, 691 Phil. 173, 188 (2012) [Per *J.* Mendoza, *En Banc*].

Section 1. *Composition of the Court and Rule on Precedence* –

(a) Composition – The Sandiganbayan is composed of a Presiding Justice and fourteen (14) Associate Justices appointed by the President of the Philippines.

(b) Rules on Precedence – The Presiding Justice shall enjoy precedence over the other members of the Sandiganbayan in all official functions. The Associate Justices shall have precedence according to the order of their appointments.

(c) The Rule on Precedence shall apply:

1) In the seating arrangement;
2) In the choice of office space, facilities and equipment, transportation and cottages;

(d) The Rule on Precedence shall not be observed:

1) In social and other non-official functions.
2) To justify any variation in the assignment of cases, amount of compensation, allowances or other forms of remuneration.

In single courts such as the regional trial courts or municipal trial courts, each branch carries its own station code and acts separately and independently from other co-equal branches. On the other hand, the Sandiganbayan divisions, as part of a collegial court, do not possess similar station codes. This is because there is no discernible difference between the divisions, and decisions are made not by one justice alone but by a majority or all of the members sitting in a division or *En Banc*. This reinforces the collegial nature of the Sandiganbayan: one that is characterized by the equal sharing of authority among the members.

Additionally, in single courts, applicants may apply for each available vacancy; thus, to find the same applicant in shortlists for vacancies in different single courts is common. On the other hand, applicants in collegial courts apply only once even when there are simultaneous vacancies because among divisions in a collegial court, there is no substantial difference to justify the creation of separate shortlists or clusters for each vacancy.

I am of the view that Former President Aquino did not commit grave abuse of discretion in disregarding the shortlists submitted to him by the Judicial and Bar Council for the simultaneous new vacancies and in treating all six shortlists as one from which he could choose the Sandiganbayan Justices. I reserve judgment on future vacancies in any collegial appellate court. This Court is unanimous on the scope of this judgment.

On the issue of this Court's supervision over the Judicial and Bar Council, I acknowledge that this Court has already taken cognizance and docketed as separate matters the deletion of Rule 8, Section 1 of JBC-009 and the removal of incumbent Supreme Court Senior Associate Justices as consultants of the Judicial and Bar Council.[18]

However, I reiterate that the Judicial and Bar Council is not mandated to submit its revised internal rules to this Court for approval. *Jardeleza v. Sereno*[19] emphasized that this Court's power of judicial review is only to ensure that rules are followed.[20] It has neither the power to lay down these rules nor the discretion to modify or replace them.[21]

The Internal Rules of the Judicial and Bar Council is necessary and incidental to the function conferred to it by the Constitution. The Constitution may have provided the qualifications of the members of the Judiciary, but it has given the Judicial and Bar Council the latitude to promulgate its own set of rules and procedures to effectively ensure its mandate. This Court cannot meddle in the Judicial and Bar Council's internal rules and policies. To do so would be an unconstitutional affront to the Judicial and Bar Council's independence.

ACCORDINGLY, I concur only in the result.

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[18] *Aguinaldo v. Aquino*, G.R. No. 224302, November 29, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/224302.pdf> 40 [Per *J.* Leonardo-De Castro, *En Banc*].

[19] G.R. No. 213181, August 19, 2014, 733 SCRA 279 [Per *J.* Mendoza, *En Banc*].

[20] *Id.* at 326.

[21] *Id.*

SEPARATE OPINION

CAGUIOA, *J.*:

I am filing this separate opinion to clarify my position on the final disposition of the case wherein the Court, in dismissing the Petition for *Quo Warranto* and *Certiorari*, declared the clustering of nominees by the Judicial and Bar Council (JBC) unconstitutional and the appointments of Associate Justices Michael Frederick L. Musngi and Ma. Geraldine Faith A. Econg, together with the four other newly-appointed Associate Justices of the Sandiganbayan, as valid. As explained below, I maintain my position that the dismissal of the Petition and the upholding of the appointments of the six newly-appointed Associate Justices of the Sandiganbayan are in order. It is, however, the ruling on the unconstitutionality of the questioned act of the JBC that I am espousing a separate view.

In the Decision dated November 29, 2016, I joined the Concurring Opinion of Justice Marvic M.V.F. Leonen. Justice Leonen stated:

> I concur in the result in so far as finding that the respondents did not gravely abuse their discretion in making appointments to the Sandiganbayan, considering that all six vacancies were opened for the first time. I disagree that we make findings as to whether the Judicial and Bar Council gravely abused its discretion considering that they were not impleaded and made party to this case. Even for the Judicial and Bar Council, a modicum of fairness requires that we should have heard them and considered their arguments before we proceed to exercise any degree of supervision as they exercise their constitutionally mandated duties.[1]

After the JBC filed on December 27, 2016 its Motion for Reconsideration (with Motion for the Inhibition of the *Ponente*) and on February 6, 2017 its Motion for Reconsideration-in-Intervention (Of the Decision dated 29 November 2016), the majority of the Court resolved to grant its motion/prayer for

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[1] *Hon. Philip A. Aguinaldo, et al. v. His Excellency President Benigno Simeon C. Aquino III, et al.*, G.R. No. 224302, November 29, 2016, Concurring Opinion of J. Leonen, p. 1.

intervention and to deny the Motion for the Inhibition of the *Ponente*. To this extent, I concur with the Court's Resolution.

On the motion for inhibition, the *ponente* is in the best position to determine whether her involvement with the JBC justifies her possible inhibition in this case. The *ponente* has found no basis for her inhibition, and I accept her decision unqualifiedly.

On the JBC's motion to intervene, I reiterate the position taken by J. Leonen, to which I concurred, that the JBC should be allowed to intervene. To be sure, the JBC is not an ordinary body. It was created by no less than our Constitution, and given the constitutional mandate of recommending to the President the nominees to every vacancy in the judiciary.[2] Hence, since the JBC's very action has been declared by the Court unconstitutional, the JBC clearly has a legal interest in the matter in litigation and is so situated as to be adversely affected by the disposition of the Court.[3] Everyone deserves a day in court. The JBC is no exception.

The very purpose and singular function of the JBC is involved in the Petition as the petitioners' reliefs are grounded on the simple formulation that the President's act of appointing Justices Musngi and Econg was made in violation of Section 9, Article VIII of the Constitution. This, in turn, is premised on the petitioners' belief that the President could not appoint Justices for any given position (in specific reference to the 16th and 21st stations/Associate Justice positions) outside of the list of nominees that had been clustered by the JBC for each of the stations/Associate Justice positions.

In plain terms, the Court is confronted with the proper interpretation of Section 9, Article VIII of the Constitution, to wit:

> Section 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.
>
> x x x x x x x x x

[2] Section 8(5), Article VIII of the Constitution provides: "The Council shall have the principal function of recommending appointees to the judiciary. x x x"

[3] RULES OF COURT, Rule 19, Sec. 1.

To my mind, the pointed question to be resolved is this: "If respondent President Benigno Simeon C. Aquino III (President Aquino) had made his appointments of the six new Associate Justices of the Sandiganbayan based on the six separate lists prepared by the JBC, meaning one appointment per list, would he have violated the Constitution?"

If the answer is in the affirmative, then the action of the JBC would be unconstitutional. Inversely, if the answer is in the negative, meaning the Court upholds as constitutional the appointments made following the clustering by the JBC, then that would, in turn, mean that the JBC had acted pursuant to its mandate under the Constitution.

To reiterate, Section 9, Article VIII of the Constitution provides:

> Sec. 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.
>
> For the lower courts, the President shall issue the appointments within ninety days from the submission of the list.

President Aquino was presented with six lists to fill up the six vacancies in the Sandiganbayan. Each list has at least three nominees. An appointment coming from each of the six lists would be in keeping with the Constitutional provision. I cannot see it otherwise. Thus, had President Aquino picked one from each of the six lists prepared by the JBC, I would not have declared his action unconstitutional.

My basis is the plain language of the above Constitutional provision which mandates the JBC to recommend nominees to any vacancy in the judiciary — to prepare a list of at least three nominees for every vacancy.[4]

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[4] A list containing at least three nominees consists a group. A group may also be called a cluster. However, a "cluster" is defined by Merriam-Webster as: "a number of similar things that occur together: such as ***a*** : two or more consecutive consonants or vowels in a segment of a speech ***b*** : a

So long as the grouping of at least three nominees for every vacancy by the JBC did not impinge on the President's appointing power, there is, in my view, no violation of the Constitution. Thus, I cannot view as grave abuse of discretion the act of the JBC in adopting the six lists it came up with following its "textualist approach of constitutional interpretation".

In the same vein, that President Aquino chose to disregard JBC's clustering, and considered all the 37 nominees named in the six lists, is likewise "textually compliant" with Section 9, Article VIII of the Constitution (*i.e.*, because there are at least three nominees for each of the six Associate Justice positions).[5] For this reason, I cannot find the act of President Aquino as constituting grave abuse of discretion.

In fine, I find nothing unconstitutional in the questioned action of the JBC—in the same manner that I find nothing unconstitutional in the act of President Aquino in disregarding the clustering done by the JBC, and in choosing Associate Justices for each of the vacancies "outside" of the "clustered" lists provided by the JBC.

ACCORDINGLY, I vote to **RECONSIDER** the Decision dated November 29, 2016 and to **DELETE** from the dispositive portion the declaration that "the clustering of nominees by the Judicial and Bar Council [as] **UNCONSTITUTIONAL**."

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group of buildings and especially houses built together on a sizable tract in order to preserve open spaces larger than the individual yard for common recreation ***c*** : an aggregation of stars or galaxies that appear close together in the sky and are gravitationally associated x x x ***d*** : a larger than expected number of cases of disease (as leukemia) occurring in a particular locality, group of people, or period of time ***e*** : a number of computers networked together in order to function as a single computing system x x x." MERRIAM-WEBSTER available at https://www.merriam-webster.com/dictionary/cluster; last accessed on February 27, 2017. As a verb, "cluster" means "to come together to form a group." *Id*. Either a group or a cluster has no fixed legal meaning. "Clustering" has no definitive legal import.

[5] Meaning, since there were 6 positions, there should have been at least a minimum of 18 nominees in compliance with the Constitution. Thus, since there were, in fact, 37 nominees for the 6 positions, then the Constitutional requirement was still met.

SECOND DIVISION

[G.R. No. 184092. February 22, 2017]

AQUILINA B. GRANADA, CARLOS B. BAUTISTA, and FELIPE PANCHO, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. No. 186084. February 22, 2017]

VENANCIO R. NAVA, *petitioner, vs.* **THE HONORABLE JUSTICES MA. CRISTINA G. CORTEZ-ESTRADA, ROLAND B. JURADO, and TERESITA V. DIAZ-BALDOS, as members of the Sandiganbayan's 5th Division, and the PEOPLE OF THE PHILIPPINES,** *respondents.*

[G.R. No. 186272. February 22, 2017]

JESUSA DELA CRUZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. No. 186488. February 22, 2017]

AQUILINA B. GRANADA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. No. 186570. February 22, 2017]

SUSANA B. CABAHUG, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and SANDIGANBAYAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* IS THE PROPER REMEDY TO ASSAIL A JUDGMENT OF CONVICTION BY THE SANDIGANBAYAN; *CERTIORARI* PETITION UNDER RULE 65 TREATED AS RULE 45 PETITION SINCE IT

WAS FILED WITHIN THE 15-DAY PERIOD UNDER SECTION 2 OF RULE 45.— *Icdang v. Sandiganbayan, et al.* emphasized that the proper remedy to take from a judgment of conviction by the Sandiganbayan is a petition for review on *certiorari* under Rule 45[.] x x x The assailed Decision and Resolution convicted Nava and the other petitioners of the crime of entering into a manifestly and grossly disadvantageous contract or transaction on behalf of the government. Thus, the proper remedy to take a petition for review on *certiorari* under Rule 45. Nonetheless, inasmuch as Nava's Petition was filed within the 15-day period provided under Section 2 of Rule 45, this Court treated it as an appeal and did not dismiss it outright. While procedural rules should be treated with utmost respect since they serve to facilitate the adjudication of cases in support of the speedy disposition of cases mandated by the Constitution, "[a] liberal interpretation . . . of the rules of procedure can be resorted to only in proper cases and under justifiable causes and circumstances."

2. ID.; EVIDENCE; IN THE ABSENCE OF MALICE OR BAD FAITH, THE CANVASS AND AUDIT PERFORMED BY STATE AUDITOR WHEN SUBSTANTIATED BY EVIDENCE SHOULD BE UPHELD IN RECOGNITION OF THEIR EXPERTISE.— As an auditor of the Commission on Audit, Geli had the same mandate to audit all government agencies and to be vigilant in safeguarding the proper use of the people's property, x x x[.] In the absence of malice or bad faith, the canvass and audit performed by the auditors, which were substantiated by evidence, should be upheld in recognition of their technical expertise. This finds support in *Lumayna, et al. v. Commission on Audit,* citing *Ocampo v. Commission on Elections,* which states: [I]t must be stressed that factual findings of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts, and in the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed. Instead of finding fault, the vigilance and initiative of Geli should be commended. Our audit officers should be expected to discharge their duties with zeal within the bounds of law.

3. ID.; ID.; CONSPIRACY BETWEEN THE ACCUSED WAS DULY ESTABLISHED AS THEIR COLLECTIVE AND INDIVIDUAL ACTS DEMONSTRATED A COMMON DESIGN TO AWARD THE CONTRACT TO A PERSON WITHOUT PUBLIC BIDDING.— Conspiracy happens "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." Furthermore, conspiracy does not have to be established by direct evidence since it may be inferred from the conduct of the accused taken collectively. However, it is necessary that a conspirator directly or indirectly contributes to the execution of the crime committed through the performance of an overt act. The Sandiganbayan found that there was a common design among the petitioners to make it appear that bidding took place to effect the release of funds for the purchase of overpriced construction supplies and materials[.] x x x The records show that the invitations to bid were only signed by Nava as the approving officer without the signature or initials of the members of the Committee, or the participation of the resident auditor. Furthermore, the abstract of quotations was not signed by all the Committee members, or the representative of the Commission on Audit[.] x x x The purchase orders certified by Granada and approved by Nava, were found to be grossly inadequate to substantiate the payments made through the disbursement vouchers approved by Nava and Cabahug. x x x Clearly, conspiracy between the accused-petitioners was duly established as their collective and individual acts demonstrated a common design, to award the contract to Geomiche without a public bidding. Their actions then led to the purchase of overpriced construction materials to the disadvantage of the government.

4. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. 3019); PRIVATE PERSONS ACTING IN CONSPIRACY WITH PUBLIC OFFICERS MAY BE HELD LIABLE FOR VIOLATION THEREOF.— Private persons acting in conspiracy with public officers may be indicted and if found guilty, be held liable for the pertinent offenses under Section 3 of Republic Act No. 3019. This supports the "policy of the anti-graft law to repress certain acts of public officers and private persons alike [which constitute] graft or corrupt practices act or which may lead thereto." x x x The prosecution, through testimonial and documentary evidence,

sufficiently proved the connivance between the public officers, who entered into and facilitated the grossly disadvantageous transactions on behalf of the government with Dela Cruz's Geomiche as the beneficiary. Undoubtedly, the collective and individual acts of petitioners showed a common design of purchasing the overpriced construction materials from Dela Cruz to the disadvantage of the government.

5. ID.; ID.; DOCTRINE OF PIERCING THE VEIL OF CORPORATE FICTION APPLIED TO HOLD THE OFFICER EQUALLY LIABLE AS CO-CONSPIRATOR.— When the separate juridical personality of a corporation is used "to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons." The Sandiganbayan has proven beyond reasonable doubt that petitioners conspired with each other to forego the required bidding process and to purchase grossly overpriced construction materials from Geomiche. There is sufficient basis to pierce the corporate veil, and Dela Cruz, as Geomiche's president, should be held equally liable as her co-conspirators.

APPEARANCES OF COUNSEL

Into Pantojan Feliciano Braceros & Pantojan Law Office for Aquilina Granada.

Dante F. Vargas for Susana Cabahug.

Jose Armand C. Arevalo for Venancio Nava.

Bernardo P. Fernandez for Jesusa Dela Cruz.

D E C I S I O N

LEONEN, *J.*:

The Commission on Audit is the guardian of public funds with the mandate to review and audit public spending.[1] The Court generally sustains the decisions of administrative authorities like the Commission on Audit in recognition of the

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[1] *Technical Education and Skills Development Authority (TESDA) v. Commission on Audit*, G.R. No. 196418, February 10, 2015, 750 SCRA 247, 254-255 [Per *J.* Bersamin, *En Banc*].

doctrine of separation of powers and their presumed knowledge and expertise of the laws they have been tasked to uphold.[2]

This resolves the consolidated Petitions for Review on *Certiorari* and Petition for *Certiorari*, which assail the Decision[3] dated August 1, 2008 and the Resolution[4] dated January 12, 2009 of the Sandiganbayan in Criminal Case No. 23459, finding petitioners Venancio R. Nava (Nava), Susana B. Cabahug (Cabahug), Aquilina B. Granada (Granada), Carlos Bautista (Bautista), Felipe Pancho (Pancho), and Jesusa Dela Cruz (Dela Cruz) guilty of violation of Section 3(g) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.[5]

On November 5, 1993, Teresita C. Lagmay (Lagmay), Eden Jane R. Intencion, and Mabini S. Reyes of the Commission on Audit, Region XI, Davao City, submitted a Joint-Affidavit[6] with an attached Special Audit Report[7] to the Commission on Audit Director, Region XI, Davao City.

The Special Audit Report disclosed that the various school forms and construction materials purchased by the Department of Education, Culture and Sports, now Department of Education, Division Office of Davao for the Elementary School Building Program were priced above the prevailing market prices, leading

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[2] *Id*. at 255 (citation omitted).

[3] *Rollo* (G.R. No. 186272), pp. 34-79. The Decision was penned by Associate Justice Roland B. Jurado and concurred in by Associate Justices Ma. Cristina G. Cortez-Estrada and Teresita V. Diaz-Baldos of the Fifth Division, Sandiganbayan.

[4] *Id*. at 81-86. The Resolution was penned by Associate Justice Roland B. Jurado and concurred in by Associate Justices Ma. Cristina G. Cortez-Estrada (Chairperson) and Teresita V. Diaz-Baldos of the Fifth Division, Sandiganbayan.

[5] *Id*. at 77, Sandiganbayan Decision.

[6] *Rollo* (G.R. No. 186488), p. 103.

[7] *Id*. at 104-138.

to a loss of ₱613,755.36 due to overpricing.[8] The auditors recommended the refund of the excess amount, and the filing of a criminal or administrative action against the public officials who participated in the transactions.[9]

On July 25, 1996, the Office of the Ombudsman, Mindanao, found that there was sufficient evidence to indict several Department of Education, Culture and Sports officials for violating Section 3(g) and (e) of Republic Act No. 3019.[10] The dispositive of the Ombudsman Resolution[11] reads:

> WHEREFORE, finding sufficient evidence to hold that the offense of violation of Section 3 (g) and (e) of RA 3019 and falsification have been committed and that the hereunder list of persons are probably guilty thereof, let the following criminal Informations be filed with the following courts, namely:
>
> A) Violation of Section 3 (g) of RA 3019 relative to the overpricing of school supplies and forms with the Regional Trial Court of Davao City against:
>
> 1. Division Superintendent Luceria de Leon,
> 2. Bids and Awards Committee (BAC) Chairman Edilberto Madria,
> 3. Clerk and BAC Member Stephen Acosta,
> 4. Clerk III and BAC Member Timoteo Fulguerinas,
> 5. Fiscal Clerk II Lydia Cerdinia and
> 6. Supply Officer Felipe Pancho
>
> B) Violation of Section 3 (g) of RA 3019 relative to the overpricing of construction materials with the Sandiganbayan against:
>
> 1. DECS Regional Director VENENCIO NAVA (with salary[)],

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[8] *Id*. at 111.

[9] *Id*. at 119.

[10] *Rollo* (G.R. No. 186570), p. 126, Office of the Ombudsman Resolution.

[11] *Id*. at 111-128. The Resolution was penned by Graft Investigation Officer I Jovito A. Coresis, Jr., reviewed by Director Rodolfo M. Elman, recommended for approval by Deputy Ombudsman for Mindanao Margarito P. Gervacio, Jr., and approved by Ombudsman Aniano A. Desierto.

2. DECS Assistant Director SUSANA CABAHUG,
3. DECS Regional Administrative Officer AQUILINA B. GRANADA,
4. DECS Finance Officer CARLOS BAUTISTA,
5. DECS Division Superintendent LUCERIA M. DE LEON,
6. DECS Division Administrative Officer EDILBERTO MADRIA,
7. DECS Supply Officer FELIPE PANCHO, and
8. GEOMICHE, Incorporated President JESUSA DELA CRUZ.

C) Violation of Section 3 (e) of RA 3019 relative to the full payment of undelivered desks with the Regional Trial Court of Davao City against Division Superintendent Luceria de Leon, Edilberto Madrias and Fernando Gaddi, Jr.;

D) Violation of Section 3 (e) of R.A. 3019 relative to the non-collection of liquidated damages from Romars with the Regional Trial Court of Davao City against Division Superintendent Luceria M. De Leon;

E) Falsification of public document relative to the falsified Inspection Report with the Regional Trial Court of Davao City against Administrative Officer Edilberto Madria, Clerk Stephen Acosta and Clerk III Timoteo Fulguerinas the cases to prosecuted (sic) until their termination by the Honorable Antonio V.A. Tan, City Prosecutor of Davao City except Violation of Section 3 (g) of RA 3019 which will have to be prosecuted by the Honorable Leonardo P. Tamayo, Special Prosecutor.

FINDING insufficient evidence to hold the other respondents liable for the charge, let the instant case against them be dismissed.

SO RESOLVED.[12]

Petitioners Nava, Cabahug, Granada, and Dela Cruz were subsequently charged with Violation of Section 3(g) of Republic Act No. 3019 in an Information[13] filed on July 25, 1996. The accusatory portion of the Information reads:

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[12] *Id*. at 126-127.

[13] *Rollo* (G.R. No. 186272), pp. 105-107.

That on or during the period comprising the calendar year 1991, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the accused VENANCIO NAVA, SUSANA B. CABAHUG, AQUILINA B. GRANADA, CARLOS BAUTISTA, LUCERIA M. DE LEON, EDILBERTO MADRIA, FELIPE PANCHO, all public officers being then the Regional Director with salary grade of 27, Assistant Regional Director, Administrative Officer, Finance Officer, Division Superintendent, Administrative Officer, Supply Officer, respectively, of the Department of Education, Culture and Sports, Region XI, while in the performance of their duties, committing the offense in relation to their office, taking advantage of their official positions, conspiring, confederating with each other, and with Geomiche Incorporated President JESUSA DELA CRUZ, to wit: 1. DECS Regional Director VENANCIO NAVA approved the disbursement voucher, purchase order and invitation to bid and signed the checks for payment; 2. DECS Assistant Director SUSANA CABAHUG approved the disbursement voucher and the purchase order for and in behalf of Regional Director Nava; 3. DECS Regional Administrative Officer AQUILINA B. GRANADA signed two different sets of purchase order with exactly the same contents and the abstract of price quotations; 4. DECS Finance Officer CARLOS BAUTISTA signed Abstract of Quotations as canvassing member; 5. DECS Division Superintendent LUCERIA M. DE LEON approved the disbursement voucher, signed the checks, recommended the approval of two different sets of purchase order, directed the preparation of the voucher and as (sic) signed the Abstract of Quotations as Canvassing member; 6. DECS Division Administrative Officer EDILBERTO MADRIA signed the checks and the abstract of quotations and canvass; 7. DECS Supply Officer FELIPE PANCHO directed the preparation of the disbursement voucher; and 8. GEOMICHE, Incorporated President JESUSA DELA CRUZ supplied the aforementioned construction materials despite knowledge that the same were overpriced, which acts though seemingly separate and distinct yet parts of a grand conspiratorial design to defraud the government, did then and there, wilfully, unlawfully, criminally, purchase in behalf of the DECS Division Office of Davao City, form (sic) Geomiche Incorporated represented [by] Jesusa dela Cruz[,] construction materials at overpriced costs ranging from 6.09% to 695.45% thus enter into a contract grossly and manifestly disadvantageous to the government for it left the DECS short-changed by a hefty sum of ₱512,967.69 - the total amount of the overprice.

CONTRARY TO LAW[14]

On March 3, 1997, the Sandiganbayan issued a hold departure order against petitioners and the other accused.[15]

Petitioners entered separate pleas of not guilty during their respective arraignments.[16]

On October 13, 1999, the parties admitted the following stipulations of facts and issues during pre-trial:[17]

1. That all the accused, except Cabahug and Pancho, admit their official positions as mentioned in the Information during the time relevant to this case. However, accused dela Cruz, who is not a public officer, admits her personal circumstances as mentioned in the information;

2. That accused Venancio Nava was not the Chairman nor a member of the Pre-Qualification Bids and Awards Committee (PBAC) at the time relevant to this case;

. . . . . .

ISSUE

1. Whether or not the transactions entered into by the accused public officials with the accused supplier for the purchase of construction materials and supplies in the amount of ₱2,072,318.25 were unreasonably overpriced, thus, causing undue injury to the government.[18]

Luceria De Leon (De Leon) died before final judgment was handed down, thus, the Sandiganbayan granted the motion to dismiss filed by her counsel.[19]

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[14] *Id*. at 105-106.

[15] *Id*. at 35, Sandiganbayan Decision.

[16] *Id.* at 36 and 39-40.

[17] *Id*. at 40.

[18] *Rollo* (G.R. No. 186488), pp. 163-166.

[19] *Rollo* (G.R. No. 186272), pp. 42-43, Sandiganbayan Decision.

The prosecution presented the following witnesses: Araceli P. Geli (Geli), State Auditor for the Department of Education, Culture and Sports Division Office, and Lagmay, State Auditor III for the Commission on Audit.[20]

Geli was the state auditor stationed at Department of Education, Culture and Sports Division Office, Davao City. Part of her duty as state auditor was to review and audit the transactions of the Division Office.[21]

On March 6, 1992, Geli submitted her annual report[22] to the Commission on Audit where she disclosed the overpricing committed in the Elementary School Building Program.[23] Geli recommended the institution of the proper action against all Department of Education, Culture and Sports officials involved in the transaction, and the restitution of the overpricing in the amount of ₱512,967.89.[24]

Geli testified that she re-canvassed the price of each item ordered by the Division Office after she was informed that there was no public bidding undertaken prior to the purchase.[25] Geli stressed that only Director Venancio Nava, as the approving officer, signed the invitation to bid and that the invitation to bid had no signature or even initials of the members of the Prequalification, Bids and Awards Committee. After her re-canvass, Geli computed an excess payment of ₱512,967.69.[26]

Lagmay testified that she headed a special audit team sometime in 1992, pursuant to the August 5, 1992 Commission on Audit Assignment Order No. 92-2113 issued by Commission on Audit Regional Office No. XI.[27]

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[20] *Id*. at 43 and 47.

[21] *Id*. at 47.

[22] *Rollo* (G.R. No. 186084), pp. 210-221.

[23] *Id*. at 212-220.

[24] *Rollo* (G.R. No. 186272), p. 47, Sandiganbayan Decision.

[25] *Id.* at 48.

[26] *Id.*

[27] *Id*. at 43.

The audit covered the period of January 1, 1991 to August 31, 1992, with the special audit team examining the purchases of supplies and materials using the Maintenance and Operating Expenses Funds and the purchase of materials for the Elementary School Building Project and grader's desks. Lagmay testified that the special audit was prompted by Geli's findings.[28]

Lagmay identified the disbursement vouchers made to Geomiche Incorporated (Geomiche), a Manila-based supplier,[29] and the purchase orders that the special audit team examined during the audit. She testified that the audited transactions required public bidding but the documents submitted to them for audit did not show any indication that public bidding was conducted.[30]

The defense thereafter presented petitioners and the other accused as witnesses.

Nava was the Department of Education, Culture and Sports Regional Director for Davao City, Region XI from March 12, 1990 to August 1, 1993. He was transferred to Department of Education, Culture and Sports Region VIII, Eastern Visayas, and then to Region I. He was Regional Director of Region II when he retired in 2000.[31]

Nava testified that then Secretary of Education Isidro Cariño ordered that the construction of elementary school buildings in Davao City should be prioritized. The Division Office and Regional Office thus agreed to expedite the project and create a Prequalification, Bids and Awards Committee (Committee) for its joint implementation.[32]

Nava admitted signing the invitations to bid but he asserted that the quotation of construction materials were not yet indicated

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[28] *Id.* at 44.

[29] *Rollo* (G.R. No. 186084), p. 114, Special Audit Report on the Department of Education, Culture and Sports Division Office, Davao City.

[30] *Rollo* (G.R. No. 186272), pp. 44-45, Sandiganbayan Decision.

[31] *Id.* at 50.

[32] *Id.* at 51.

when he signed the invitations to bid.[33] He testified that the abstract of bids was attached to the invitations to bid sent to him and that it was signed by the members of the Committee. The abstract of bids was also approved by De Leon, the Schools Division Superintendent of Davao City.[34]

Nava likewise admitted signing the disbursement vouchers. However, he claimed that he signed them only after De Leon certified that "the expenses [were] necessary, lawful[,] and incurred in her direct supervision."[35]

Bautista testified that he worked in the Budget and Finance Division of the Department of Education, Culture and Sports Region XII, Cotabato City as a finance officer.[36]

Bautista attested that in 1991, he became a member of the Committee.[37] He narrated that the Committee had to evaluate the quotations or the bids from the suppliers and then enter these bids in the abstract of bids. The Committee would then recommend for approval the quotation from the lowest bidder. He admitted that after he received the quotations from the suppliers, he no longer verified the accuracy of the submitted quotations.[38]

Cabahug was the Department of Education, Culture and Sports Assistant Regional Director for Region XI from April 1, 1991 to June 30, 1992. She was transferred to Cebu, Region VII for a few years before being re-assigned to Region XI on September 8, 1994. On January 9, 1995, she was assigned as the Regional Director of Region XI, and served in that capacity until her retirement on August 10, 2000.[39]

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[33] *Id*.

[34] *Id*. at 52.

[35] *Id*. at 52-53.

[36] *Id*. at 53.

[37] *Id*. at 54.

[38] *Id*.

[39] *Id*. at 55.

Cabahug acknowledged that in 1991, in her capacity as Assistant Regional Director, she signed eight (8) purchase orders and one (1) disbursement voucher on behalf of Regional Director Nava, who was then on official leave. Cabahug asserted that before she signed the purchase orders, Granada and De Leon had already affixed their signatures on the purchase orders.[40] Granada certified that the prices of the material purchased were reasonable, while De Leon certified that the purchases were necessary, legal, and made under her direct supervision.[41] The Fiscal Clerk of the Davao City Division then signed the disbursement voucher, certifying the availability of funds and that all the supporting documents were in order.[42]

Granada testified that in 1991, she was the Department of Education, Culture and Sports Regional Administrative Officer for Region XI. As the Regional Administrative Officer, Granada prepared communications for the Regional Director's signature. Her other functions included acting as Chairman of the Committee in the absence of the Assistant Regional Director. However, she said that she was only a member, and not the chair, in the bidding conducted in 1991.[43]

Granada stated that in preparation for the purchase of materials for the construction of school buildings, bidding was conducted in 1991. The invitation to bid was published in a newspaper and copies were sent to the different construction and hardware shops in Davao City.[44] Interested parties then confirmed their intention to bid and the actual bidding was conducted in the Department of Education, Culture and Sports Regional Office.[45] However, Granada admitted that she could no longer recall the number of suppliers who participated.[46]

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[40] *Id*. at 55-56.

[41] *Id*. at 56.

[42] *Id.*

[43] *Id*. at 58.

[44] *Id.*

[45] *Id*. at 58-59.

[46] *Id*. at 59.

After evaluating the bids, Granada testified that the Committee awarded the project to petitioner Dela Cruz of Geomiche, the bidder with the lowest submitted quotations.[47]

Pancho testified that in 1991, he was employed as a supply officer for the Department of Education, Culture and Sports.[48]

Pancho attested that he was directed by De Leon to prepare payment vouchers for the deliveries made by Geomiche.[49] He stated that he did not consider going against the directives of De Leon, who was his superior, because he did not think that there was anything irregular with her instructions.[50]

Counsel for Dela Cruz manifested that he would not be presenting testimonial evidence for Dela Cruz.[51]

On August 1, 2008, the Sandiganbayan ruled that the prosecution was able to prove the guilt of petitioners. The Sandiganbayan also ruled that there was a concerted effort by the petitioners to facilitate the release of funds and make it appear that a public bidding took place.[52] The *fallo* of the assailed Sandiganbayan Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered convicting accused **VENANCIO R. NAVA, SUSANA B. CABAHUG, AQUILINA B. GRANADA, CARLOS BAUTISTA, EDILBERTO MADRIA, FELIPE PANCHO and JESUSA DELA CRUZ** of the crime of violation of the Anti-graft and Corrupt Practices Act particularly Section 3(g) thereof, or entering on behalf of government in a contract or transaction manifestly and grossly disadvantageous to the same whether or not the public officer profited or did not profit thereby.

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[47] *Id*. Geomiche Incorporated was mistakenly referred to as Daimitsi Company.

[48] *Id*. at 61.

[49] *Id*. at 61-62.

[50] *Id*. at 61.

[51] *Id.* at 63.

[52] *Id*. at 73-74 and 76-77.

In the absence of any aggravating or mitigating circumstances, applying the Indeterminate Sentence Law, accused are hereby sentenced to suffer the penalty of imprisonment of six (6) years, and one (1) day as minimum to twelve (12) years and one (1) day as maximum and to suffer perpetual disqualification from public office. The accused are further ordered to pay, jointly and severally, the government the amount of ₱512,967.69, which it suffered in view of the overpricing in the purchases committed by them.

SO ORDERED.[53] (Emphasis in the original)

On January 12, 2009, the Sandiganbayan denied[54] the motions for reconsideration filed by Nava, Cabahug, Granada, and Dela Cruz.

Nava filed a petition for *certiorari*,[55] while Cabahug,[56] Granada[57] and Dela Cruz[58] filed their respective petitions for review of the Sandiganbayan Decision and Resolution.

Petitioner Nava asserts that his Petition for *Certiorari* under Rule 65 was filed in lieu of an appeal under Rule 45 because the latter, being only limited to questions of law, was insufficient.[59] Nava claims that the assailed Decision and Resolution "were based on a gross misapprehension of facts arising from the **fraudulent** conduct of the audit[.]"[60] Furthermore, he asseverates that the Sandiganbayan findings were not supported by evidence and were in fact, even contradicted by evidence.[61]

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[53] *Id*. at 77.

[54] *Id*. at 86.

[55] *Rollo* (G.R. No. 186084), pp. 3-42.

[56] *Rollo* (G.R. No. 186570), pp. 11-39.

[57] *Rollo* (G.R. No. 186488), pp. 16-39.

[58] *Rollo* (G.R. No. 186272), pp. 8-33.

[59] *Rollo* (G.R. No. 186084), p. 9, Petition.

[60] *Id*. (Emphasis in the original).

[61] *Id*.

Nava posits that the Special Audit Report was baseless as it relied heavily on the personal and unauthorized post-canvass conducted by Geli.[62] Nava claims that Geli's post-canvass was full of irregularities because it:

> (i) intentionally did not detail and compare the brands to be purchased, (ii) failed to take into consideration the level of inventory of the establishments, (iii) failed to get the name and designations, as well as the sworn statements, of the persons who supposedly submitted the quotations, (iv) failed to consider that the establishments did not intend to deliver the items quoted for the price quoted, and (v) failed to consider the terms of the purchases made by the Division Office.[63]

Lastly, Nava asserts that the Decision erred in applying the presumption of regularity to Geli's canvass when Geli did not follow the established Commission on Audit procedures.[64]

The Office of the Special Prosecutor states that Nava erred in filing a special civil action pursuant to Rule 65 when the proper remedy should have been an appeal under Rule 45.[65] The Office of the Special Prosecutor maintains that Nava's Petition involves questions of fact, which should not be allowed in a petition for certiorari.[66] It also posits that the Petition cannot be considered as a petition for review, as the Court's jurisdiction in a petition for review is limited to errors of law.[67]

Furthermore, the Office of the Special Prosecutor argues that the Sandiganbayan did not commit grave abuse of discretion in considering the finding of irregularities in the transaction, even if the pre-trial was limited to the overpricing of the construction materials. The collateral matter of the irregularities in the transaction is intimately related to the overpricing of the

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[62] *Id*.

[63] *Id*.

[64] *Id*. at 29-30.

[65] *Id*. at 327-332, Office of the Special Prosecutor's Comment.

[66] *Id*. at 330.

[67] *Id*. at 331.

construction materials purchased.[68] The Office of the Special Prosecutor also argues that in the absence of bad faith or malice, the canvass performed by the auditors should be given the benefit of the doubt due to the presumption of regularity accorded to a public official.[69]

Finally, the Office of the Special Prosecutor asserts that the finding of conspiracy against Nava and the other petitioners was sufficiently established.[70]

Petitioner Cabahug claims that she merely signed the disbursement vouchers and purchase orders because her immediate superior, petitioner Nava, was absent and she had to act on his behalf so that construction would not be stalled.[71]

Cabahug likewise claims that the prosecution failed to prove her participation in the supposed conspiracy. Her participation was ministerial in nature since she had to sign on behalf of her immediate supervisor in his absence. She also did not participate in the execution and consummation of the contract, and she had no knowledge of the defects of the contract. Hence, she asserts that conspiracy has not been proven beyond reasonable doubt against her.[72]

Cabahug maintains that the questioned documents "already passed [through] several layers of other signatories before it reached her."[73] She insists that she relied on the presumption of regularity in the acts of her subordinates.[74]

The Office of the Special Prosecutor posits that Cabahug cannot claim good faith when she signed on Nava's behalf

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[68] *Id*. at 332-333.

[69] *Id*. at 336.

[70] *Id*. at 341-342.

[71] *Rollo* (G.R. No. 186570), p. 12, Petition for Review on *Certiorari*.

[72] *Id*. at 33-34.

[73] *Id.* at 33.

[74] *Id.*

because she was fully aware of the irregularities of the documents when she signed them. The Office of the Special Prosecutor also asserts that the *Arias* doctrine cannot be applied to Cabahug, and that her participation in the conspiracy was duly proven.[75]

Petitioner Granada claims that Geli's post-canvass should not have been considered by the Sandiganbayan since the participants in the post-canvass were not the actual bidders in the previously held bidding for the construction materials and supplies.[76] Furthermore, Granada maintains that Geli's canvassed prices, which were lower than Geomiche's, were not absolute proof that there was gross disadvantage to the government.[77]

The Office of the Solicitor General contends that it was sufficiently proven that no public bidding was conducted, leading to a violation of Section 3(g) of Republic Act No. 3019.[78] The Office of the Solicitor General also contends that the Sandiganbayan did not err in finding that Granada and her other co-accused conspired with each other.[79]

The Office of the Special Prosecutor states that the prosecution sufficiently proved that the transactions entered into by the petitioners caused undue injury to the government.[80] The Office of the Special Prosecutor further states that Granada's guilt was proven beyond reasonable doubt, and that conspiracy was evident, making all the accused liable as principals.[81]

Petitioner Dela Cruz asserts that a strict construction of Section 3(g) of Republic Act No. 3019 "covers **only public officers** who enter into a proscribed contract or transaction **'on behalf of the government'**. It does not impose any penalty upon a

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[75] *Id*. at 149-151, Office of the Special Prosecutor's Comment.

[76] *Rollo* (G.R. No. 186488), pp. 34-35, Petition for Review on *Certiorari*.

[77] *Id.* at 35.

[78] *Id*. at 589, Office of the Solicitor General's Comment.

[79] *Id*. at 597.

[80] *Id*. at 678-680, Office of the Special Prosecutor's Comment.

[81] *Id.* at 680-681.

private party – natural or juridical – with whom the public officer contracts."[82]

Dela Cruz further asserts that even if she acted as Geomiche's president, as a corporate officer, she cannot be held personally liable for the acts of the corporation.[83] She maintains that while the Information alleged conspiracy, the assailed Decision was silent on her conspiracy with the other petitioners.[84]

Dela Cruz claims that the Sandiganbayan's finding of irregularities or deficiencies are in excess of its jurisdiction for going beyond the issue formulated in the pre-trial order.[85] She also avers that the finding of excessive amounts by the state auditors was without factual or legal basis.[86]

The Office of the Special Prosecutor maintains that the finding of conspiracy against Dela Cruz and her other co-accused makes her liable for violating Section 3(g) of Republic Act No. 3019, even if she was not a public officer.[87]

We resolve the following issues:

First, whether Nava's Petition for Review on *Certiorari* under Rule 65 was the proper remedy to take;

Second, whether the presumption of regularity applies with the State Auditor's post-canvass of similar items purchased by the Department of Education, Culture and Sports from Geomiche; and

Finally, whether conspiracy was sufficiently proven by the prosecution.

The petitions are devoid of merit.

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[82] *Rollo* (G.R. No. 186272), pp. 17-18, Petition for Review on *Certiorari*. (Emphasis in the original).

[83] *Id*. at 18.

[84] *Id*. at 20.

[85] *Id*. at 22-23.

[86] *Id*. at 28-30.

[87] *Id*. at 147-148 and 152-154, Office of the Special Prosecutor's Comment.

I

The Office of the Special Prosecutor claims that Nava erred in filing a special civil action pursuant to Rule 65 when the proper remedy should have been an appeal under Rule 45.[88] The Office of the Special Prosecutor states that Nava's Petition asks for a re-examination of the evidence presented, which is not proper in a petition for certiorari.[89]

The Office of the Special Prosecutor also posits that Nava's Petition cannot be considered as a petition for review, as the Court's jurisdiction in a petition for review is limited to errors of law.[90] It then points out that the issues raised in Nava's Petition are primarily questions of fact, but "with [an] allegation that there was grave abuse of discretion amounting to lack or excess of jurisdiction."[91]

Nava insists that his Petition for *Certiorari* under Rule 65 was not a substitute for a lost appeal since it was timely filed. Nava further insists that while the remedy of appeal under Rule 45 was available to him, the same was insufficient as it was limited to questions of law. Nava claims that the assailed Decision and Resolution were based on a fraudulent audit, surmises, and speculations.[92]

Section 1 of Rule 45 of the Rules of Court provides the mode of appeal from judgments, final orders, or resolutions of the Sandiganbayan:

SECTION 1. *Filing of Petition with Supreme Court.* – A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court

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[88] *Rollo* (G.R. No. 186084), p. 327, Office of the Special Prosecutor's Comment.

[89] *Id*. at 330.

[90] *Id*. at 331.

[91] *Id*.

[92] *Id*. at 9, Petition for *Certiorari*.

or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

Icdang v. Sandiganbayan, et al.[93] emphasized that the proper remedy to take from a judgment of conviction by the Sandiganbayan is a petition for review on *certiorari* under Rule 45:

> At the outset it must be emphasized that the special civil action of *certiorari* is not the proper remedy to challenge a judgment conviction rendered by the [Sandiganbayan]. Petitioner should have filed a petition for review on *certiorari* under Rule 45.
>
> Pursuant to Section 7 of Presidential Decree No. 1606, as amended by Republic Act No. 8249, decisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court by petition for review on *certiorari* raising pure questions of law in accordance with Rule 45 of the Rules of Court. Section 1 of Rule 45 of the Rules of Court provides that "[a] party desiring to appeal by *certiorari* from a judgment, final order or resolution of the . . . Sandiganbayan . . . whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition . . . shall raise only questions of law, which must be distinctly set forth." Section 2 of Rule 45 likewise provides that the petition should be filed within the fifteen-day period from notice of the judgment or final order or resolution, or of the denial of petitioner's motion for reconsideration filed in due time after notice of judgment.[94] (Underscoring in the original, citation omitted)

The assailed Decision and Resolution convicted Nava and the other petitioners of the crime of entering into a manifestly and grossly disadvantageous contract or transaction on behalf of the government. Thus, the proper remedy to take is a petition for review on *certiorari* under Rule 45.

Nonetheless, inasmuch as Nava's Petition was filed within the 15-day period provided under Section 2 of Rule 45,[95] this

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[93] 680 Phil. 265 (2012) [Per *J.* Villarama, Jr., First Division].

[94] *Id*. at 275-276.

[95] RULES OF COURT, Rule 45, Sec. 2 provides:

Court treated it as an appeal and did not dismiss it outright. While procedural rules should be treated with utmost respect since they serve to facilitate the adjudication of cases in support of the speedy disposition of cases mandated by the Constitution, "[a] liberal interpretation . . . of the rules of procedure can be resorted to only in proper cases and under justifiable causes and circumstances."[96]

II

The Commission on Audit is the guardian of public funds and the Constitution has vested it with the "power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property [of] the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters."[97]

The Constitution likewise empowered the Commission on Audit with the:

> exclusive authority . . . to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.[98]

Rule 45. Appeal by *Certiorari* to the Supreme Court

. . . . . .

Section 2. *Time for Filing; Extension*. — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

[96] *Hon. Fortich v. Hon. Corona*, 359 Phil. 210, 220 (1998) [Per *J.* Martinez, Second Division].

[97] CONST., Art. IX-D, Sec. 2(1).

[98] CONST., Art. IX-D, Sec. 2(2).

The Commission on Audit's exercise of its general audit power is part of the checks and balances system inherent in our form of government.[99]

Petitioner Nava insists that this Court's ruling in *Arriola v. Commission on Audit*,[100] is applicable in the case at bar.[101] In *Arriola*, this Court ruled that in order to accord due process to the subjects of an audit by the Commission on Audit, there should be a policy of transparency where the subjects of the audit could access and review the documents used for the canvass.[102] *Arriola* also prompted the Commission on Audit to issue Memorandum Order No. 97-102 dated March 31, 1997, which states:[103]

> 3.2 To firm up the findings to a reliable degree of certainty, initial findings of overpricing based on market price indicators mentioned in pa. 2.1 above have to be supported with canvass sheet and/or price quotations indicating:
>
> a) the identities of the suppliers or sellers;
>
> b) the availability of stock sufficient in quantity to meet the requirements of the procuring agency;
>
> c) the specifications of the items which should match those involved in the finding of overpricing;
>
> d) the purchase/contract terms and conditions which should be the same as those of the questioned transaction.[104]

Unfortunately for petitioners, neither *Arriola* nor the Commission on Audit Memorandum Order No. 97-102 can be applied retroactively.[105]

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[99] *Olaguer v. Hon. Domingo*, 411 Phil. 576, 593 (2001) [Per *J.* Puno, *En Banc*].

[100] 279 Phil. 156 (1991) [Per *J.* Medialdea, *En Banc*].

[101] *Rollo* (G.R. No. 186084), pp. 27-28, Petition for *Certiorari*.

[102] *Arriola v. Commission on Audit*, 279 Phil. 156, 163 (1991) [Per *J.* Medialdea, *En Banc*].

[103] *Nava v. Justices Palattao, Ong, and Cortez-Estrada*, 531 Phil. 345, 363 (2006) [Per *C.J.* Panganiban, First Division].

[104] *Id.* at 363-364.

[105] *Id.* at 364.

The questioned transactions and the delivery of construction materials happened sometime in 1991. Geli then conducted her post-audit, and submitted her Memorandum[106] and Report on the Annual Operations Audit[107] on March 6, 1992. Thus, the requirements of canvass sheets or price quotations listed down in the Commission on Audit's Memorandum Order No. 97-102, which was issued on March 31, 1997, cannot be applied to Geli's 1992 audit.

More importantly, the Sandiganbayan found that the contract for the purchase of construction materials and supplies from Geomiche for the construction of school buildings did not undergo public bidding.[108]

Petitioner Nava asserts that the Sandiganbayan erred in ruling on the issue of public bidding when the same was not included in the Information. He argues that the only charge against him and the other petitioners in the Information was whether they entered into a grossly and manifestly disadvantageous contract to the government, and not whether public bidding was conducted.[109]

While it is true that the Information only charged petitioners with entering into a gross and manifestly disadvantageous contract to the government, the Sandiganbayan's assailed Decision touched on the issue of lack of public bidding as a circumstantial evidence in support of the accusation of overpricing. The finding of overpricing was never determined simply because there was no public bidding. The absence of public bidding only underscored the irregularity of the transactions. The various audits conducted confirmed the fact of overpricing as follows:

To make things worse, it was also indubitably established that aside from the fact that there was no public bidding conducted, the

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[106] *Rollo* (G.R. No. 186084), p. 210.

[107] *Id.* at 211-221.

[108] *Rollo* (G.R. No. 186272), pp. 70-71, Sandiganbayan Decision.

[109] *Rollo* (G.R. No. 186084), pp. 13-15, Petition for *Certiorari*.

accused overpriced the construction supplies and materials in the amount of ₱512,967.69, to the disadvantage and prejudice of the government (Exhibits "C", "C-1", "D", "D-1", "D-2", "D-3", "D-3-a").

. . . . . .

In the case at bar, there being no public bidding conducted, the government was deprived of setting the standard or parameter upon which to lay the basis of what may be considered just or reasonable prices of the purchases made from the lone supplier. In the absence of such indispensable basis, the purchases made from Geomiche Incorporated are considered grossly or manifestly disadvantageous to the government. Hence, the manifest or gross disadvantage complained of is not purely speculative or that it has no basis in fact and in law because the same have been quantified by the overpriced purchases. The prosecution, through testimonial and documentary evidence, was able to substantiate with concrete evidence of what it claimed to be grossly or manifestly disadvantageous to the government.[110]

Petitioners fault Geli for conducting a purportedly personal and unauthorized canvass when she sent out invitations to bid to the other suppliers of construction materials in Davao City.

We do not agree.

As an auditor of the Commission on Audit, Geli had the same mandate to audit all government agencies and to be vigilant in safeguarding the proper use of the people's property, thus:

[Pros. Calonge]:	Will you kindly state briefly the basic or regular function of your job as State Auditor 2 stationed at DECS Division Office of Davao City?
[Geli]:	My duties then as State Auditor among others was to examine, settle and audit the regular accounts and transactions of the Division office.[111]

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[110] *Rollo* (G.R. No. 186272), pp. 71-73, Sandiganbayan Decision.

[111] *Rollo* (G.R. No. 186488), p. 461. TSN, February 27, 2001, p. 11.

. . . . . .

[Atty. Fernandez]:	But what you conducted, according to you, was a private canvass, was it not?
[Geli]:	Yes, that was a canvass, sir.
Q:	It was an informal canvass which you undertook on your own without any order or directive from any superior officer, is it not?
A:	No, sir, because we are covered by a particular circular which is COA Circular No. 76-34 dated July 15, 1976.
Q:	And what does that Circular provide?
A:	It provides that in case of doubt as to the reasonableness of the price or prices of the items purchased, the auditor shall canvass thereof.[112]

The Special Audit Report found that:

> [d]uring the period of delivery, [Geli] made a canvass of prices of similar construction materials from reputable suppliers/establishments in Davao City in order to determine the reasonableness of their prices . . . In the canvass conducted, the prices for each item were observed to have been excessive ranging from 6.09% to 695.45% . . . As a result, the government lost the amount of ₱512,967.69[.][113]

Geli testified on the methodology she used in the re-canvass as follows:

[Pros. Calonge]:	What formula did you adopt in arriving in the conclusion that there was overpricing in this transaction?
[Geli]:	The procedures, Your Honor, that I undertook is to re-canvass of the price of

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[112] *Id.* at 493, TSN, September 26, 2001, p. 11.

[113] *Rollo* (G.R. No. 186084), p. 115, Special Audit Report on the Department of Education, Culture and Sports Division Office, Davao City.

each and every item ordered by the Division Office since I was told that there was no public bidding conducted, as evidenced by the documents submitted like the disbursement vouchers. First, the invitation to bid was only signed by Director Venancio Nava as the approving officer; Second- there were no signatures or even initials by the members of the PBAC which is the Prequalification Bid and Award Committee; Third- There is no indication that there was participation by the resident auditor of the DECS Regional Office or representative; and Fourth- As confirmed by the resident auditor herself from the DECS Regional Office, she told me that indeed there was no public bidding conducted as result of the re-canvass I made, I compared with the price list offered by the bidders and, upon computation and the additional of the ten (10) percent tolerable allowance granted by our Rules and Regulations, I came up with the total overpriced of ₱512,967.69.

. . . . . .

Q: Why did you conduct a personal canvass?

A: First, as I said, Your Honor the payment was to be made at the DECS Division Office; Secondly- I doubted the reasonableness of the price offered by the winning bidder.[114]

In the absence of malice or bad faith, the canvass and audit performed by the auditors, which were substantiated by evidence, should be upheld in recognition of their technical expertise. This finds support in *Lumayna, et al. v. Commission on Audit*,[115] citing *Ocampo v. Commission on Elections*,[116] which states:

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[114] *Rollo* (G.R. No. 186488), pp. 470-471 and 476, TSN, February 27, 2001, pp. 20-21 and 26.

[115] 616 Phil. 929 (2009) [Per *J.* Del Castillo, *En Banc*].

[116] 382 Phil. 522 (2000) [Per *J.* Kapunan, *En Banc*].

[I]t must be stressed that factual findings of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts, and in the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed.[117]

Instead of finding fault, the vigilance and initiative of Geli should be commended. Our audit officers should be expected to discharge their duties with zeal within the bounds of the law.

III

Conspiracy happens "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it."[118] Furthermore, conspiracy does not have to be established by direct evidence since it may be inferred from the conduct of the accused taken collectively.[119] However, it is necessary that a conspirator directly or indirectly contributes to the execution of the crime committed through the performance of an overt act.[120]

The Sandiganbayan found that there was a common design among the petitioners to make it appear that bidding took place to effect the release of funds for the purchase of overpriced construction supplies and materials, thus:

The series of acts of the accused in signing all the documents to effect the release of the funds for the purchase of construction supplies and materials spelled nothing but conspiracy. The signatures of all the accused appearing in the documents indicate accused's common design in achieving their one goal to the damage and prejudice of the government.

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[117] *Lumayna, et al. v. Commission on Audit*, 616 Phil. 929, 940 (2009) [Per *J.* Del Castillo, *En Banc*].

[118] REV. PEN. CODE, Art. 8, par. 2.

[119] *Magsuci v. Sandiganbayan*, 310 Phil. 14, 19 (1995) [Per *J.* Vitug, *En Banc*].

[120] *Pecho v. People*, 331 Phil. 1, 17 (1996) [Per *J.* Davide, Jr., *En Banc*].

As indubitably proved by the prosecution, the direct interrelated participation of each of the accused (Exhibit "N-1") were as follows[:] Venancio Nava approved the Invitation to Bids, Disbursement Vouchers, Purchase Orders and signed the checks; Aquilina Granada signed two (2) different sets of Purchase Orders, with the same contents and signed the Abstract of Quotation as Chairman; Susan Cabahug approved a Disbursement Voucher and another set of Purchase Order for Director Nava; Carlos Bautista signed the Abstract of Quotation/ Canvass as a member; Luceria M. De Leon directed the preparation of Disbursement Vouchers and approved the same, recommended the approval of two (2) different sets of Purchase Orders, signed the Abstract of Quotation/Canvass as member and signed the checks; Edilberto Madria signed the Abstract of Quotation/Canvass as member and signed the checks; and Felipe Pancho directed the preparation of the Disbursement Vouchers. In these series of interconnected acts of the public officers, accused Dela Cruz was the beneficiary.

Verily, where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident, and all the perpetrators will be liable as principals.[121]

The records show that the invitations to bid[122] were only signed by Nava as the approving officer without the signature or initials of the members of the Committee, or the participation of the resident auditor.[123] Furthermore, the abstract of quotations was not signed by all the Committee members, or the representative of the Commission on Audit, as testified by State Auditor Geli:

AJ NAZARIO:

> Why did you say that there was no public bidding?

[Geli]:

> Firstly, Your Honor, I was told by the resident auditor that there was no public bidding because

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[121] *Rollo* (G.R. No. 186272), pp. 75-76, Sandiganbayan Decision.

[122] *Rollo* (G.R. No. 186084), pp. 161-190.

[123] *Rollo* (G.R. No. 186272), p. 48, Sandiganbayan Decision.

in the first place all biddings conducted by the Regional office then were witnessed by the resident auditor or any representative.

AJ NAZARIO:

You came to the conclusion that there was no public bidding because the resident auditor told you?

Witness:

Yes, Your Honor. Secondly, the documents supporting the disbursement voucher do not indicate that there was any public bidding conducted.

AJ NAZARIO:

What was wrong with the documents?

Witness:

First, it should be the PBAC who will initiate the calling of the public bidding. Second- there was no publication in any newspaper or general circulation. Third, there was never a posting of the invitations to bid and then all the members of the PBAC have no participation as indicated in the Invitations to Bid as well as the Abstract of Quotations.

AJ NAZARIO:

This Invitation to Bid, which was according to you, you were told that there was no public bidding. Under what circumstances, how was it told to you?

Witness:

It was only verbally communicated to me. Not only by the resident auditor but also the DECS Division office' officials and employees.

AJ NAZARIO:

> How did these employees get involved, was it in the course of the performance of your functions that this information was given to you?

Witness:

> Yes, Your Honors.[124]

The purchase orders certified by Granada and approved by Nava, were found to be grossly inadequate to substantiate the payments made through the disbursement vouchers approved by Nava and Cabahug.[125] The Special Audit Report[126] submitted by State Auditor Lagmay reads:

> The first payment to G[e]omich[e], Inc. under Voucher No. 91-05-02-SB for ₱1,500,000.00 (Appendix 11) was supported by purchase orders issued by the DECS Division Office (Appendix 9) with a total amount of only ₱70,505.21. The second voucher amounting to ₱557,093.25 (Appendix 12) was supported by the DECS Regional Office purchase orders for only ₱71,459.25 (Appendix 10) while the third voucher for ₱15,225.00 (Appendix 13) had no purchase order attached. From these payments, it appears that the amounts indicated/appearing in the purchase orders were less than the payments made, as tabulated hereunder:

Voucher No.	Amount	PO attached	Diff.
91-05-02-SB	₱1,500,000.00	₱70,505.21	₱1,429,494.79
91-07-114SB	557,093.25	71,459.25	485,634.00
91-07-179SB	15,225.00		15,225.00
	₱2,072,318.25	₱141,964.46	₱1,930,353.79[127]

(Underscoring in the original)

[124] *Rollo* (G.R. No. 186488), pp. 478-479, TSN, February 27, 2001, pp. 28-29.

[125] *Rollo* (G.R. No. 186084), pp. 216-217, Report on the Annual Operations Audit.

[126] *Id.* at 113-120.

[127] *Id.* at 117-118.

Clearly, conspiracy between the accused-petitioners was duly established as their collective and individual acts demonstrated a common design, to award the contract to Geomiche without a public bidding. Their actions then led to the purchase of overpriced construction materials to the disadvantage of the government.

Petitioner Dela Cruz asserts that as a private individual, she cannot be held liable under Section 3(g) of Republic Act No. 3019 because it only covers public officers who enter into a contract or transaction on behalf of the government.[128]

Dela Cruz is mistaken.

Section 3(g) of Republic Act No. 3019 reads:

Section 3. *Corrupt practices of public officers.* – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

. . . . . .

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

The elements of this offense are as follows:

(1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the government.[129]

Private persons acting in conspiracy with public officers may be indicted and if found guilty, be held liable for the pertinent offenses under Section 3 of Republic Act No. 3019. This supports the "policy of the anti-graft law to repress certain acts of public officers and private persons alike [which constitute] graft or corrupt practices act or which may lead thereto."[130]

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[128] *Rollo* (G.R. No. 186272), pp. 17-18, Petition for Review on *Certiorari.*

[129] *Dans, Jr. v. People*, 349 Phil. 434, 460 (1998) [Per *J.* Romero, Third Division].

[130] *People v. Go*, 730 Phil. 362, 369 (2014) [Per *J.* Peralta, *En Banc*].

In *Singian, Jr. v. Sandiganbanyan, et al.*:[131]

> For one to be successfully prosecuted under Section 3(g) of RA 3019, the following elements must be proven: "1) the accused is a public officer; 2) the public officer entered into a contract or transaction on behalf of the government; and 3) the contract or transaction was grossly and manifestly disadvantageous to the government." However, private persons may likewise be charged with violation of Section 3(g) of RA 3019 if they conspired with the public officer. Thus, "if there is an allegation of conspiracy, a private person may be held liable together with the public officer, in consonance with the avowed policy of the Anti-Graft and Corrupt Practices Act which is 'to repress certain acts of public officers and private persons alike which may constitute graft or corrupt practices or which may lead thereto."[132] (Citations omitted)

The prosecution, through testimonial and documentary evidence, sufficiently proved the connivance between the public officers, who entered into and facilitated the grossly disadvantageous transactions on behalf of the government with Dela Cruz's Geomiche as the beneficiary. Undoubtedly, the collective and individual acts of petitioners showed a common design of purchasing the overpriced construction materials from Dela Cruz to the disadvantage of the government.

When the separate juridical personality of a corporation is used "to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons."[133]

The Sandiganbayan has proven beyond reasonable doubt that petitioners conspired with each other to forego the required bidding process and to purchase grossly overpriced construction materials from Geomiche. There is sufficient basis to pierce

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[131] 718 Phil. 455 (2013) [Per *J.* Del Castillo, Second Division].

[132] *Id.* at 472.

[133] *Republic v. Mega Pacific eSolutions, Inc.*, G.R. No. 184666, June 27, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/184666.pdf> 36 [Per *C.J.* Sereno, First Division].

the corporate veil, and Dela Cruz, as Geomiche's president, should be held equally liable as her co-conspirators.

WHEREFORE, premises considered, the Petitions are **DISMISSED.** The assailed Decision dated August 1, 2008 and Resolution dated January 12, 2009 of the Sandiganbayan are **AFFIRMED** in toto.

SO ORDERED.

Carpio (Chairperson), *Velasco, Jr.,*[*] *Mendoza,* and *Jardeleza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 198954. February 22, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RODRIGO MACASPAC *y* ISIP,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE FINDINGS OF THE TRIAL COURT THEREON WILL NOT BE DISTURBED ON APPEAL UNLESS SOME FACTS OR CIRCUMSTANCES OF WEIGHT WERE OVERLOOKED AS TO MATERIALLY AFFECT THE DISPOSITION OF THE CASE.— [T]he assessment of the credibility of the witnesses and their testimonies is best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grueling examination. These factors are the most significant in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face

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[*] Designated additional member per Raffle dated Februry 20, 2017.

of conflicting testimonies. Through its personal observations during the entire proceedings, the trial court can be expected to determine whose testimonies to accept and which witnesses to believe. Accordingly, the findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight were overlooked, misapprehended, or misinterpreted as to materially affect the disposition of the case.

2. **CRIMINAL LAW; REVISED PENAL CODE; AGGRAVATING CIRCUMSTANCES; TREACHERY; WHEN APPRECIATED.—** There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make. Two conditions must concur in order for treachery to be appreciated, namely: *one*, the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and *two*, said means, methods or forms of execution were deliberately or consciously adopted by the assailant. Treachery, whenever alleged in the information and competently and clearly proved, qualifies the killing and raises it to the category of murder.

3. **ID.; ID.; ID.; EVIDENT PREMEDITATION; REQUISITES.—** The requisites for the appreciation of evident premeditation are: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused had clung to his determination to commit the crime; and (3) the lapse of a sufficient length of time between the determination and execution to allow him to reflect upon the consequences of his act.

4. **ID.; ID.; HOMICIDE; COMMITTED IN CASE AT BAR.—** Without the Prosecution having sufficiently proved the attendance of either treachery or evident premeditation, Macaspac was guilty only of homicide for the killing of Jebulan.

APPEARANCES OF COUNSEL

Public Attorney's Office for accused-appellant.
Office of the Solicitor General for plaintiff-appellee.

D E C I S I O N

BERSAMIN, *J.*:

When the victim was alerted to the impending lethal attack due to the preceding heated argument between him and the accused, with the latter even uttering threats against the former, treachery cannot be appreciated as an attendant circumstance. When the resolve to commit the crime was immediately followed its execution, evident premeditation cannot be appreciated. Hence, the crime is homicide, not murder.

The Case

Rodrigo Macaspac *y* Isip (Macaspac) hereby seeks to reverse the decision promulgated on April 7, 2011,[1] whereby the Court of Appeals (CA), in CA-G.R. CR HC No. 03262, affirmed with modification the decision rendered in Criminal Case No. C-31494 by the Regional Trial Court (RTC), Branch 129, in Caloocan City declaring him guilty beyond reasonable doubt of murder for the killing of Robert Jebulan *y* Pelaez (Jebulan).[2]

Antecedents

The information charging Macaspac with murder filed by the Office of the City Prosecutor of Caloocan City reads as follows:

That on or about the 7th day of July 1988, at Caloocan City, Metro Manila and within the jurisdiction of the Honorable Court, the above-named accused, without any justifiable cause, with deliberate intent to kill, and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab with a kitchen knife on the vital part of his body one ROBERT JEBULAN Y PELAEZ, thereby inflicting upon the latter serious physical injuries, which injuries directly caused the victim's death.

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[1] *Rollo,* pp. 2-14; penned by Associate Justice Ricardo R. Rosario with Associate Justice Hakim S. Abdulwahid (retired) and Associate Justice Danton Q. Bueser concurring.

[2] CA *rollo,* pp. 21-36; penned by Presiding Judge Thelma Canlas Trinidad-Pe Aguirre.

Contrary to law.[3]

The case was archived for more than 15 years because Macaspac had gone into hiding and remained at large until his arrest on July 28, 2004. Upon his arraignment on August 31, 2004, he pleaded *not guilty* to the foregoing information.[4]

The Prosecution's evidence revealed that at around 8:00 in the evening of July 7, 1988, Macaspac was having drinks with Ricardo Surban, Dionisio Barcomo *alias* Boy, Jimmy Reyes, and Jebulan on Pangako Street, Bagong Barrio, Caloocan City. In the course of their drinking, an argument ensued between Macaspac and Jebulan. It became so heated that, Macaspac uttered to the group: *Hintayin n'yo ako d'yan, wawalisin ko kayo*, and then left.[5] After around three minutes Macaspac returned wielding a kitchen knife. He confronted and taunted Jebulan, saying: *Ano*? Jebulan simply replied: *Tama na.* At that point, Macaspac suddenly stabbed Jebulan on the lower right area of his chest, and ran away. Surban and the others witnessed the stabbing of Jebulan. The badly wounded Jebulan was rushed to the hospital but was pronounced dead on arrival.[6]

Macaspac initially invoked self-defense, testifying that he and Jebulan had scuffled for the possession of the knife, and that he had then stabbed Jebulan once he seized control of the knife, *viz.*:[7]

Atty. Sanchez

Q - And it was alleged here in the information that on July 7, 1988 at around 8 o'clock in the evening, in the City of Caloocan you stabbed the victim Robert Julian (Jebulan). What can you say about this?

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[3] *Rollo*, p. 3.

[4] *Id.*

[5] *Id.* at 3-4.

[6] *Id.* at 4.

[7] *Id.* at 5.

A - We scuffled for possession for a sharp instrument and when **I was able to grab that sharp instrument**, I was able to stab Roberto Jebulan, sir.[8]

However, Macaspac later on claimed that Jebulan had been stabbed by accident when he fell on the knife. Macaspac denied being the person with whom Jebulan had the argument, which he insisted had been between Barcomo and one Danny. According to him, he tried to pacify their argument, but his effort angered Jebulan, who drew out the knife and tried to stab him. He fortunately evaded the stab thrust of Jebulan, whom he struck with a wooden chair to defend himself. The blow caused Jebulan to fall on the knife, puncturing his chest.[9]

On February 19, 2008, the RTC found Macaspac guilty beyond reasonable doubt of murder,[10] disposing:

WHEREFORE, the Court finds that the killing of ***Robert Jebulan*** is qualified by treachery. In the absence of mitigating and aggravating circumstances, the Court hereby finds the accused ***guilty beyond reasonable doubt as charged,*** and hereby sentences him to suffer the imprisonment of ***reclusion perpertua.***

The accused is ordered to indemnify the victim in the amount of ₱50,000.00 as moral damages.

Costs de oficio.

SO ORDERED.[11]

On appeal, the CA affirmed the conviction but modified the civil liability by imposing civil indemnity of ₱50,000.00, exemplary damages of ₱25,000.00, and temperate damages of ₱25,000.00, decreeing:

WHEREFORE, the appealed 19 February 2008 Decision of Branch 129 of the Regional Trial Court of Caloocan City is **AFFIRMED**

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[8] *Id*. at 8, citing TSN, 24 July 2007, p. 5.

[9] *Id*. at 5, citing TSN, 24 July 2007, pp. 8-14 and pp. 17-19.

[10] CA *rollo,* pp. 21-36.

[11] *Id*. at 35.

with the **MODIFICATIONS** that appellant, aside from the moral damages awarded by the trial court in the amount of Fifty Thousand Pesos (₱50,000.00), is further **ORDERED** to pay the heirs of the victim, Robert Jebulan, the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Twenty-Five Thousand Pesos (₱25,000.00) as exemplary damages and Twenty-Five Thousand Pesos (₱25,000.00) as temperate damages.

SO ORDERED.[12]

Macaspac is now before the Court arguing that the CA erred in affirming his conviction for murder on the ground that the Prosecution did not establish his guilt for murder beyond reasonable doubt.[13]

Ruling of the Court

It is settled that the assessment of the credibility of the witnesses and their testimonies is best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grueling examination. These factors are the most significant in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its personal observations during the entire proceedings, the trial court can be expected to determine whose testimonies to accept and which witnesses to believe. Accordingly, the findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight were overlooked, misapprehended, or misinterpreted as to materially affect the disposition of the case. [14]

The Court sees no misreading by the RTC and the CA of the credibility of the witnesses and the evidence of the parties. On the contrary, the CA correctly observed that inconsistencies had rendered Macaspac's testimony doubtful as to shatter his credibility.[15] In so saying, we do not shift the burden of proof

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[12] *Supra* note 1, at 13.

[13] *Rollo,* p. 29.

[14] *People v. Pili*, G.R. No. 124739, April 15, 1998, 289 SCRA 118, 131.

[15] *Rollo,* p. 8.

to Macaspac but are only stressing that his initial invocation of self-defense, being in the nature of a forthright admission of committing the killing itself, placed on him the entire burden of proving such defense by clear and convincing evidence.

Alas, Macaspac did not discharge his burden. It is noteworthy that the CA rejected his claim of self-defense by highlighting the fact that Jebulan had not engaged in any unlawful aggression against him. Instead, the CA observed that Jebulan was already running away from the scene when Macaspac stabbed him. The CA expressed the following apt impressions of the incident based on Macaspac's own declarations in court, *viz.:*

ACP Azarcon

x x x x x x x x x

Q - How could you (appellant) hit him (Jebulan) at his back when you were facing him?

A - When I picked up the chair, when I was about to hit him with the chair, **Obet turned his back to ran (*sic*) from me**, sir.

Q - **To ran (*sic*) away from you**?

A - **Yes, sir**, because he saw me, I was already holding the chair, sir. (Emphasis supplied)

Self-defense, requires three (3) elements, namely: (a) **unlawful aggression on the part of the victim**; (b) reasonable necessity of the means employed to prevent or repel the aggression; and (c) lack of sufficient provocation on the part of the person defending himself, must be proved by clear and convincing evidence.

From the above-quoted testimony of appellant, it is clear that even before he stabbed Jebulan, the latter was already running away from him. Hence, granting that Jebulan was initially the aggressor, appellant's testimony shows that said unlawful aggression already ceased when appellant stabbed him. Clearly, appellant's act of stabbing said victim would no longer be justified as an act of self-defense.[16]

Macaspac's initial claim that he and Jebulan had scuffled for the possession of the knife, and that he had stabbed Jebulan

[16] *Id*. at 9-10.

only after grabbing the knife from the latter became incompatible with his subsequent statement of only striking Jebulan with the wooden chair, causing the latter to fall on the knife. The incompatibility, let alone the implausibility of the recantation, manifested the lack of credibility of Macaspac as a witness.

Both the RTC[17] and the CA[18] concluded that Macaspac had suddenly attacked the completely unarmed and defenseless Jebulan; and that Macaspac did not thereby give Jebulan the opportunity to retaliate, or to defend himself, or to take flight, or to avoid the deadly assault.

Did the lower courts properly appreciate the attendance of *alevosia*, or treachery?

This is where we differ from the lower courts. We cannot uphold their conclusion on the attendance of treachery.

There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make.[19] Two conditions must concur in order for treachery to be appreciated, namely: *one*, the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and *two*, said means, methods or forms of execution were deliberately or consciously adopted by the assailant.[20] Treachery, whenever alleged in the information and competently and clearly proved, qualifies the killing and raises it to the category of murder.[21]

Based on the records, Macaspac and Jebulan were out drinking along with others when they had an argument that soon became

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[17] *Supra* note 2, at 35.

[18] *Supra* note 1, at 11.

[19] Article 14, paragraph 16, *Revised Penal Code.*

[20] *People v. Flores*, G.R. No. 137497, February 5, 2004, 422 SCRA 91, 97.

[21] *People v. Sarabia,* G.R. No. 106102, October 29, 1999, 317 SCRA 684, 694.

heated, causing the former to leave the group and punctuating his leaving with the warning that he would be back "to sweep them," the vernacular for killing the others (*Hintayin n'yo ako d'yan, wawalisin ko kayo*). His utterance was a threat of an impending attack. Shortly thereafter, Macaspac returned to the group wielding the knife, immediately confronted and directly taunted Jebulan (*Ano*?), and quickly stabbed the latter on the chest, and then fled. The attack, even if it was sudden, did not constitute treachery. He did not mount the attack with surprise because the heated argument between him and the victim and his angry threat of going back "to sweep them" had sufficiently *forewarned* the latter of the impending lethal assault.

Nonetheless, the information also alleged the attendance of evident premeditation. We now determine if the records sufficiently established this circumstance.

The requisites for the appreciation of evident premeditation are: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused had clung to his determination to commit the crime; and (3) the lapse of a sufficient length of time between the determination and execution to allow him to reflect upon the consequences of his act.[22]

Macaspac's having suddenly left the group and his utterance of *Hintayin n'yo ako d'yan, wawalisin ko kayo* marked the time of his resolve to commit the crime. His returning to the group with the knife manifested his clinging to his resolve to inflict lethal harm on the others. The first and second elements of evident premeditation were thereby established. But it is the essence of this circumstance that the execution of the criminal act be preceded by cool thought and reflection upon the resolve

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[22] *People v. Torpio*, G.R. No. 138984, June 4, 2004, 431 SCRA 9, 15; *People v. Delos Reyes*, G.R. No. 140680, May 28, 2004, 430 SCRA 166, 178; *People v. Factao*, G.R. No. 125966, January 13, 2004, 419 SCRA 38, 57; *People v. Catbagan*, G.R. Nos. 149430-32, February 23, 2004, 423 SCRA 535, 565; *People v. Garcia*, G.R. No. 153591, February 23, 2004, 423 SCRA 583, 588; *People v. Montejo*, No. 68857, November 21, 1988, 167 SCRA 506, 513; *People v. Diva*, G.R. No. L-22946, April 29, 1968, 23 SCRA 332, 340; *People v. Ardisa*, No. L-29351, January 23, 1974, 55 SCRA 245, 259.

to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment.[23] Was the lapse of time between the determination and execution – a matter of three minutes, based on the records – sufficient to allow him to reflect upon the consequences of his act? By quickly returning to the group with the knife, he let no appreciable time pass to allow him to reflect upon his resolve to carry out his criminal intent. It was as if the execution immediately followed the resolve to commit the crime. As such, the third requisite was absent.

Accordingly, we cannot appreciate the attendance of evident premeditation in the killing, for, as explained in *People v. Gonzales*:[24]

x x x **The qualifying circumstance of premeditation can be satisfactorily established only if it could be proved that the defendant had ample and sufficient time to allow his conscience to overcome the determination of his will, if he had so desired, after meditation and reflection, following his plan to commit the crime**. (*United States v. Abaigar*, 2 Phil., 417; *United States v. Gil*, 13 Phil., 530.) **In other words, the qualifying circumstance of premeditation can be taken into account only when there had been a cold and deep meditation, and a tenacious persistence in the accomplishment of the criminal act**. (*United States v. Cunanan*, 37 Phil. 777.) **But when the determination to commit the crime was immediately followed by execution, the circumstance of premeditation cannot be legally considered**. (*United States v. Blanco*, 18 Phil. 206.) x x x (Bold underscoring is supplied for emphasis)

Without the Prosecution having sufficiently proved the attendance of either treachery or evident premeditation, Macaspac was guilty only of homicide for the killing of Jebulan. The penalty for homicide, based on Article 246 of the *Revised Penal Code*, is *reclusion temporal*. Under Section 1 of the

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[23] *People v. Tagana*, G.R. No. 133023, March 4, 2004, 424 SCRA 620, 634; *People v. Borbon*, G.R. No. 143085, March 10, 2004, 425 SCRA 178, 189; *People v. Factao*, G.R. No. 125966, January 13, 2004, 419 SCRA 38, 57; Aquino, *The Revised Penal Code*, 1987 Ed., Vol. I, p. 352, citing *People v. Durante*, 53 Phil. 363 (1929); and *People v. Camo*, 91 Phil. 240 (1952).

[24] 76 Phil. 473, 479 (1946).

Indeterminate Sentence Law,[25] the court, in imposing a prison sentence for an offense punished by the *Revised Penal Code*, or its amendments, is mandated to prescribe an indeterminate sentence the *maximum term* of which shall be that which, *in view of the attending circumstances*, could be properly imposed under the rules of the *Revised Penal Code*, and the *minimum term* shall be within the range of the penalty next lower to that prescribed by the *Revised Penal Code* for the offense. In the absence of aggravating or mitigating circumstances, the imposable penalty is *reclusion temporal* in its medium period, or 14 years, eight months, and one day to 17 years and four months. This is pursuant to Article 64 of the *Revised Penal Code*.[26] It is such period that the *maximum term* of the indeterminate sentence is reckoned from. On the other hand, the minimum term of the indeterminate sentence is taken from the degree next lower to *reclusion temporal*, which is *prision mayor*. Accordingly, Macaspac shall suffer the indeterminate penalty of eight years of *prision mayor*, as minimum, to 14 years, eight months and one day of *reclusion temporal*.

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[25] Section 1. Hereafter, in imposing a prison sentence for an offense punished by the *Revised Penal Code*, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. *(As amended by Act No. 4225)*

[26] Article 64. *Rules for the application of penalties which contain three periods.* — In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the court shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

x x x x x x x x x

Anent the civil liabilities, we deem a modification to be necessary to align with prevailing jurisprudence.[27] Hence, Macaspac shall pay to the heirs of Jebulan the following amounts, namely: (a) ₱50,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; and (c) ₱50,000.00 as temperate damages. The temperate damages are awarded because no documentary evidence of burial or funeral expenses was presented during the trial.[28] Moreover, Macaspac is liable for interest on all the items of damages at the rate of 6% *per annum* reckoned from the finality of this decision until fully paid.[29]

WHEREFORE, the Court **DECLARES** accused-appellant **RODRIGO MACASPAC *y* ISIP** guilty beyond reasonable doubt of **HOMICIDE**, and **SENTENCES** him to suffer the indeterminate penalty of **EIGHT YEARS OF *PRISION MAYOR***, as minimum, to **14 YEARS, EIGHT MONTHS AND ONE DAY OF *RECLUSION TEMPORAL***, as maximum; to pay to the heirs of the late Robert Jebulan: (a) ₱50,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; and (c) ₱50,000.00 as temperate damages, plus interest on all damages hereby awarded at the rate of 6% *per annum* from the finality of the decision until fully paid.

The accused shall further pay the costs of suit.

SO ORDERED.

Velasco, Jr. (Chairperson), *Leonen,*[*] and *Caguioa,*[**] *JJ.,* concur.

Reyes, J., on leave.

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[27] *People v. Jugueta*, G.R. No. 202124, April 5, 2016.

[28] *Id.*

[29] See *Nacar v. Gallery Frames,* G.R. No. 189871, August 13, 2013, 703 SCRA 439, 459.

[*] In lieu of Justice Francis H. Jardeleza, who inhibited due to prior participation as the Solicitor General, per the raffle of February 20, 2017.

[**] Designated as additional Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

SECOND DIVISION

[G.R. No. 204990. February 22, 2017]

RAMON AMPARO *y* IBAÑEZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ROBBERY IN BAND; COMMITTED WHEN FOUR (4) OR MORE MALEFACTORS TAKE PART IN THE ROBBERY; EVEN IF THE CRIME IS COMMITTED BY SEVERAL MALEFACTORS IN A MOTOR VEHICLE ON A PUBLIC HIGHWAY, THE CRIME IS STILL CLASSIFIED AS ROBBERY IN BAND, NOT HIGHWAY ROBBERY OR BRIGANDAGE, FOR IT IS HIGHWAY ROBBERY ONLY WHEN IT CAN BE PROVEN THAT THE MALEFACTORS PRIMARILY ORGANIZED THEMSELVES FOR THE PURPOSE OF COMMITTING THAT CRIME.— Robbery is the taking, with the intent to gain, of personal property belonging to another by use of force, violence or intimidation. Under Article 294 (5) in relation to Article 295, and Article 296 of the Revised Penal Code, robbery in band is committed when four (4) or more malefactors take part in the robbery. All members are punished as principals for any assault committed by the band, unless it can be proven that the accused took steps to prevent the commission of the crime. Even if the crime is committed by several malefactors in a motor vehicle on a public highway, the crime is still classified as robbery in band, not highway robbery or brigandage under Presidential Decree No. 532. It is highway robbery only when it can be proven that the malefactors primarily organized themselves for the purpose of committing that crime. In this instance, the prosecution was able to prove beyond reasonable doubt that petitioner was guilty of robbery in band.

2. ID.; ID.; PROPER PENALTY.— Under Article 294 (5) of the Revised Penal Code, as amended, the imposable penalty for robbery is *prision correccional* in its maximum period to *prision mayor* in its medium period. Article 295 of the same Code,

however, qualifies the penalty to its maximum period if the robbery is committed by a band. Thus, the proper penalty is *prision mayor* in its maximum period. Applying the Indeterminate Sentence Law, in the absence of any mitigating or aggravating circumstance, the minimum penalty shall be within the range of the penalty next lower in degree, *prision mayor* minimum, or from six (6) years and one (1) day to eight (8) years. The maximum of the penalty shall be within the range of the medium period of *prision mayor* medium, or from eight (8) years, eight (8) months and one (1) day to nine (9) years and four (4) months. The trial court imposed a penalty of four (4) years and two (2) months as minimum and ten (10) years as maximum, which is not within the prescribed range. Thus, the imposable penalty must be modified to six (6) years and one (1) day of *prision mayor* minimum to nine (9) years and four (4) months of *prision mayor* medium as maximum.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

This resolves a Petition for Review on Certiorari[1] assailing the Court of Appeals Decision[2] dated January 31, 2012 in CA-G.R. CR No. 33386.

Information was filed against Ahmed Alcubar y Sabiron (Alcubar), Roberto Guarino y Capnao (Guarino), Juanito Salmeo y Jacob (Salmeo), and Ramon Amparo y Ibañez (Amparo) for robbery. The Information[3] reads:

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[1] *Rollo*, pp. 10-25.

[2] *Id.* at 27-37. The Decision was penned by Associate Justice Ricardo R. Rosario, and concurred in by Associate Justices Rosmari D. Carandang and Danton Q. Bueser of the Seventh Division, Court of Appeals, Manila.

[3] *Id.* at 68.

That on April 26, 2007, in the City of Manila, Philippines, all the accused conspired and confederated together and helped one another armed with deadly bladed weapons and therefore in band, with intent of gain and by means of force, violence and intimidation, that is, by boarding a passenger jeepney with Plate No. DGM-407 at the corner of C.M. Recto Avenue and T. Mapua Street, Sta. Cruz, Manila and immediately poked said arms upon RAYMOND IGNACIO y GAA, and announced the hold-up, did then and there willfully, unlawfully and feloniously took, robbed and carried away the Nokia 6680 worth [₱]14,000.00, Philippine Cu[r]rency, of said Raymond G. Ignacio against his will, to the damage and prejudice of the said owner in the same amount as aforesaid.

Contrary to law.[4]

The accused were arraigned and they pleaded "not guilty."[5] Trial on the merits ensued.

Raymond Gaa Ignacio (Ignacio) testified that on April 26, 2007, he was riding a jeepney going to Lawton when two (2) men boarded the jeepney along T. Mapua Street.[6] One of them sat beside him, pointed a knife at him and declared a hold-up.[7] He was ordered to take his necklace off and hand over his mobile phone.[8]

Ignacio then heard a gunshot, causing the robbers to be rattled and drop their knives on the jeepney bench.[9] A police officer arrived and ordered the robbers to alight from the jeepney.[10] Four (4) men, later identified as Alcubar, Guarino, Salmeo, and Amparo, were handcuffed and taken to the police station.[11]

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[4] *Id.*

[5] *Id.* at 69.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

Ignacio identified Alcubar as the man who poked a knife at him, and Guarino as the one who announced the hold-up.[12] He also identified Salmeo and Amparo as the ones who sat in the front seat beside the driver.[13] He admitted that he did not know what Salmeo and Amparo were doing at the time of the incident.[14] However, he testified that he saw them place their knives on the jeepney bench when the police fired the warning shot.[15]

SPO3 Renato Perez (SPO3 Perez) testified that on the day of the incident, he was about to report for work when he noticed a commotion inside a passenger jeepney.[16] He then saw Alcubar embracing a man later identified as Ignacio, while pointing a "stainless one[-]foot long double bladed fan knife" at him.[17] He followed the jeepney and fired a warning shot.[18] Later, he arrested Alcubar.[19]

SPO3 Perez ordered the other three (3) men to alight from the jeepney when the other passengers pointed them out as Alcubar's companions.[20] Another police officer arrived and helped him make the arrest.[21] Upon frisking the men, he recovered a *balisong* from Guarino, an improvised kitchen knife from Salmeo, and a fan knife from Amparo.[22] He also testified that he invited the other passengers to the police station to give their statements but only Ignacio went with him.[23]

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[12] *Id*.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id*. at 69-70.

[18] *Id*. at 70.

[19] *Id.*

[20] *Id*.

[21] *Id*

[22] *Id.*

[23] *Id.*

Amparo, on the other hand, testified that on April 26, 2007, he was in Carriedo, Quiapo, Manila, working as a parking attendant when a person he did not know arrived and arrested him. Later, he was brought to the Philippine National Police Anti-Carnapping Unit where he saw Ignacio for the first time.[24]

On March 3, 2010, the Regional Trial Court of Manila, Branch 34 rendered a Decision[25] finding the accused guilty of robbery in band. The dispositive portion reads:

> WHEREFORE, finding the accused GUILTY beyond reasonable doubt of the crime of Robbery in band defined and punished under Art. 294 in relation to Article 295 of the Revised Penal Code without any mitigating or aggravating circumstances attendant to its commission granting the accused the benefit of the Indeterminate Sentence Law, all the accused is hereby sentenced to suffer an indeterminate prison term ranging from four (4) years and two (2) months of prision correccional as minimum to ten (10) years of prision mayor maximum, as maximum.
>
> The accused shall be credited with the full extent of their preventive imprisonment under Art. 29 of the Revised Penal Code.
>
> Their bodies shall be committed to the custody of the Director of the Bureau of Correction, National Penitentiary, Muntinglupa (sic) City thru the City Jail Warden of Manila.
>
> SO ORDERED.[26]

All the accused appealed to the Court of Appeals.[27] Amparo, in particular, argued that he and Salmeo should be acquitted since the witnesses for the prosecution did not testify that they performed any act in furtherance of the robbery.[28]

On January 31, 2012, the Court of Appeals rendered its Decision[29] dismissing the appeal.

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[24] *Id.* at 73.

[25] *Id.* at 68-76. The Decision was penned by Presiding Judge Reynaldo G. Ros of Branch 34, Regional Trial Court, Manila.

[26] *Id.* at 76.

[27] *Id*. at 32.

[28] *Id*. at 32-34.

[29] *Id*. at 27-37.

The Court of Appeals noted that Amparo had abandoned his earlier defense of alibi, and was arguing that there was no evidence that he actively participated in the commission of the robbery.[30] It found, however, that he was "caught red-handed"[31] with a weapon during the robbery, which was sufficient to establish that he had a common unlawful purpose with the rest of the accused.[32]

Amparo filed a Motion for Reconsideration,[33] which was denied in the Resolution[34] dated November 29, 2012. Hence, the Petition for Review[35] was filed.

Petitioner argues that Ignacio did not implicate him as a co-conspirator in his testimony since he did not even witness how the weapon was allegedly recovered by the police.[36] He points out that the bank employee who allegedly pinpointed him as part of the group, and the police officer who allegedly recovered the bladed weapon from him were not brought to court to testify.[37] He asserts that he was arrested, not for his participation during the robbery, but due to his alleged possession of a bladed weapon, which was a violation of the city ordinance.[38]

In its Comment,[39] the Office of the Solicitor General maintains that the prosecution was able to prove petitioner's guilt beyond reasonable doubt. It points out that direct proof is unnecessary

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[30] *Id*. at 34-35.

[31] *Id*. at 35.

[32] *Id.*

[33] *Id*. at 40-45.

[34] *Id*. at 39. The Resolution was penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Rosmari D. Carandang and Danton Q. Bueser of the Former Seventh Division, Court of Appeals, Manila.

[35] *Id*. at 10-25.

[36] *Id*. at 17.

[37] *Id*. at 18-20.

[38] *Id.* at 20.

[39] *Id*. at 105-112.

to prove conspiracy since conspiracy can be inferred from the acts of the accused that they all had a common purpose.[40] It argues that the prosecution was able to show that petitioner and his co-accused had the common objective of committing an armed robbery inside the jeepney and armed themselves with knives to accomplish their objective.[41]

In his Reply,[42] petitioner insists that the testimonies of the prosecution's witnesses failed to implicate him as a co-conspirator.[43] He also argued that there was no proof that a knife was recovered from his person, and other than this allegation, the prosecution was unable to prove that he committed any other overt act constituting the crime of robbery.[44]

The sole issue in this case is whether the trial court and the Court of Appeals erred in finding that petitioner was guilty beyond reasonable doubt of the crime of robbery with band.

Robbery is the taking, with the intent to gain, of personal property belonging to another by use of force, violence or intimidation.[45] Under Article 294 (5)[46] in relation to Article

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[40] *Id*. at 108.

[41] *Id.* at 109.

[42] *Id*. at 118-125.

[43] *Id.* at 119.

[44] *Id*. at 121.

[45] REV. PEN. CODE, Art. 293 provides:

Article 293. Who are Guilty of Robbery. — Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, shall be guilty of robbery.

[46] REV. PEN. CODE, Art. 294 provides:

Article 294. Robbery with Violence Against or Intimidation of Persons — Penalties. — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

. . . . . .

5. The penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period in other cases. (As amended by Rep. Act No. 7659 (1993)).

295,[47] and Article 296[48] of the Revised Penal Code, robbery in band is committed when four (4) or more malefactors take part in the robbery. All members are punished as principals for any assault committed by the band, unless it can be proven that the accused took steps to prevent the commission of the crime.[49]

Even if the crime is committed by several malefactors in a motor vehicle on a public highway, the crime is still classified as robbery in band, not highway robbery or brigandage[50] under Presidential Decree No. 532.[51] It is highway robbery only when

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[47] REV. PEN. CODE, Art. 295 provides:

Article 295. Robbery with physical injuries, committed in an uninhabited place or by a band, or with the use of firearm on a street, road or alley. — If the offenses mentioned in subdivisions three, four, and five of the next preceding article shall be committed in an uninhabited place or by a band or by attacking a train, street car, motor vehicle or airship, or by entering the passengers' compartments in a train or, in any manner, taking the passengers thereof by surprise in the respective conveyances, or on a street, road, highway, or alley, and the intimidation is made with the use of a firearm, the offender shall be punished by the maximum period of the proper penalties.

In the same cases, the penalty next higher in degree shall be imposed upon the leader of the band. (As amended by Republic Act No. 12 (1946))

[48] REV. PEN. CODE, Art. 296 provides:

Article 296. Definition of a band and penalty incurred by the members thereof. — When more than three armed malefactors take part in the commission of robbery, it shall be deemed to have been committed by a band. When any of the arms used in the commission of the offense be an unlicensed firearm, the penalty to be imposed upon all the malefactors shall be the maximum of the corresponding penalty provided by law, without prejudice to the criminal liability for illegal possession of such unlicensed firearm.

Any member of a band who is present at the commission of a robbery by the band, shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent the same. (As amended by Republic Act No. 12, September 5, 1946.)

[49] REV. PEN. CODE, Art. 296.

[50] See *People v. Puno*, 292 Phil. 80 (1993) [Per *J.* Regalado, Second Division].

[51] Anti-Piracy and Anti-Highway Robbery Law (1974).

it can be proven that the malefactors primarily organized themselves for the purpose of committing that crime.[52]

In this instance, the prosecution was able to prove beyond reasonable doubt that petitioner was guilty of robbery in band.

Ignacio testified on cross-examination that Guarino announced a hold-up, and that Alcubar pointed a weapon at him, forcing him to take off his necklace and hand over his mobile phone.[53] He did not see what petitioner was doing at the time of the incident since petitioner and his co-accused Salmeo were seated beside the driver.[54] Ignacio's failure to see what petitioner was doing during the robbery is justified considering that the configuration of a jeepney bench makes it hard to see precisely what passengers seated in the front seat are doing.

Ignacio was also able to testify that he saw both Salmeo and petitioner place their knives on the jeepney bench when the police fired a warning shot.[55] SPO3 Perez corroborated this, and testified that there were eight (8) other passengers in the jeepney, who pointed out all four (4) of the accused.[56] After making the arrests, the four (4) accused were frisked, and a fan knife was recovered from petitioner.[57]

Petitioner initially offered a defense of alibi before the trial court.[58] He abandoned this defense on appeal after the trial court concluded that petitioner's alibi was not enough to overcome Ignacio's positive identification.[59] He then argued before the Court of Appeals that while Ignacio might have seen him at

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[52] See *People v. Puno*, 292 Phil. 80 (1993) [Per *J.* Regalado, Second Division].

[53] *Rollo*, p. 69.

[54] *Id.*

[55] *Id.*

[56] *Id.* at 70.

[57] *Id.*

[58] *Id.* at 73-74.

[59] *Id.* at 75.

the scene of the crime, there was no evidence of petitioner's exact involvement.[60] His changing defenses, however, only show the weakness of his arguments. Nevertheless, a conviction stands not on the weakness of the defense, but on the strength of the prosecution's evidence.[61] As discussed, the evidence of the prosecution was strong enough to overcome the presumption of innocence.

Under Article 294 (5) of the Revised Penal Code, as amended, the imposable penalty for robbery is *prision correccional* in its maximum period to *prision mayor* in its medium period. Article 295 of the same Code, however, qualifies the penalty to its maximum period if the robbery is committed by a band. Thus, the proper penalty is *prision mayor* in its maximum period.[62]

Applying the Indeterminate Sentence Law, in the absence of any mitigating or aggravating circumstance, the minimum penalty shall be within the range of the penalty next lower in degree, *prision mayor* minimum, or from six (6) years and one (1) day to eight (8) years. The maximum of the penalty shall be within the range of the medium period of *prision mayor* medium, or from eight (8) years, eight (8) months and one (1) day to nine (9) years and four (4) months.[63]

The trial court imposed a penalty of four (4) years and two (2) months as minimum and ten (10) years as maximum,[64] which is not within the prescribed range. Thus, the imposable penalty must be modified to six (6) years and one (1) day of *prision mayor* minimum to nine (9) years and four (4) months of *prision mayor* medium as maximum.

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[60] *Id*. at 61-62.

[61] See *Macayan v. People*, G.R. No. 175842, March 18, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/march2015/175842.pdf> [Per J. Leonen, Second Division].

[62] See *People v. Lumiwan, et al*., 356 Phil. 521 (1998) [Per J. Bellosillo, First Division].

[63] See *People v. Lumiwan, et al.*, 356 Phil. 521 (1998) [Per J. Bellosillo, First Division].

[64] *Rollo*, p. 76.

However, per the January 19, 2016[65] letter of Bureau of Corrections P/Supt. I Roberto R. Rabo, petitioner's maximum sentence imposed by the trial court had already expired upon adjustment of his sentence pursuant to Republic Act No. 10592.[66] It is noted, however, that the Bureau of Corrections does not detail how the maximum sentence was adjusted. Nevertheless, the service of the modified penalty is rendered moot since the Bureau of Corrections certified that the adjusted penalty was based on the maximum penalty imposed by the trial court. Thus, petitioner is ordered released unless he is detained for some other lawful cause.[67]

WHEREFORE, the Petition is **DENIED**. The judgment of conviction in the Decision dated January 31, 2012 in CA-G.R. CR No. 33386 and Criminal Case No. 07-252654 is **AFFIRMED**. The imposable penalty is **MODIFIED**. Petitioner Ramon Amparo y Ibañez is found **GUILTY** beyond reasonable doubt of the crime of Robbery in band defined and punished under Article 294 in relation to Article 295 of the Revised Penal Code and is hereby sentenced to suffer an indeterminate prison term of six (6) years and one (1) day of *prision mayor* minimum to nine (9) years and four (4) months of *prision mayor* medium as maximum.

Since petitioner has already served more than the penalty imposed upon him by the trial court in Criminal Case No. 07-252654, his immediate release from custody is hereby **ORDERED** unless he is detained for some other lawful cause.

SO ORDERED.

Carpio (Chairperson), Peralta, Mendoza, and *Perlas-Bernabe,*[*] *JJ.,* concur.

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[65] *Id*. at 132.

[66] An Act Amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, as amended, Otherwise Known as the Revised Penal Code (2013).

[67] See *Agote v. Hon. Lorenzo*, 502 Phil. 318 (2005) [Per *J*. Garcia, *En Banc*].

[*] Designated as Fifth Member of the Second Division per S.O. No. 2416-P dated January 4, 2017.

SECOND DIVISION

[G.R. No. 206343. February 22, 2017]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **LORENZO MUSNI, EDUARDO SONZA and SPOUSES IRENEO AND NENITA SANTOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; WHERE THE FINDINGS OF FACT OF THE TRIAL COURTS ARE AFFIRMED BY THE COURT OF APPEALS, SUCH FINDINGS ARE BINDING AND CONCLUSIVE ON THE SUPREME COURT.— The determination of whether petitioner acted in good faith is a factual matter, which cannot be raised before this Court in a Rule 45 petition. To emphasize, "this Court is not a trier of facts and does not normally embark on a re-examination of the evidence adduced by the parties during trial." Although this rule admits of exceptions, the present case does not fall under any of them. x x x Where "the findings of fact of the trial courts are affirmed by the Court of Appeals, the same are accorded the highest degree of respect and, generally, will not be disturbed on appeal[;] Such findings are binding and conclusive on this Court." Accordingly, this Court finds no reason to disturb the findings of the Court of Appeals, which affirmed the findings of the trial court, that petitioner is neither a mortgagee in good faith nor an innocent purchaser for value.

2. CIVIL LAW; CONTRACTS; MORTGAGE; DOCTRINE OF MORTGAGEE IN GOOD FAITH; IN THE CASE OF BANKS AND OTHER FINANCIAL INSTITUTIONS, GREATER CARE AND DUE DILIGENCE ARE REQUIRED SINCE THEY ARE INBUED WITH PUBLIC INTEREST, FAILING WHICH RENDERS THE MORTGAGEES IN BAD FAITH; CASE AT BAR.— In *Philippine Banking Corporation v. Dy, et al.*, this Court explained this concept in relation to banks: Primarily, it bears noting that the doctrine of "mortgagee in good faith" is based on the rule that all persons

dealing with property covered by a Torrens Certificate of Title are not required to go beyond what appears on the face of the title. This is in deference to the public interest in upholding the indefeasibility of a certificate of title as evidence of lawful ownership of the land or of any encumbrance thereon. In the case of banks and other financial institutions, however, greater care and due diligence are required since they are imbued with public interest, failing which renders the mortgagees in bad faith. x x x On petitioner's claim that it was a mortgagee in good faith, the Court of Appeals held that petitioner "was actually remiss in its duty to ascertain the title of [respondents Eduardo and Nenita] to the property." x x x Petitioner's defense that it could not have known the criminal action since it was not a party to the case and that there was no notice of *lis pendens* filed by respondent Musni, is unavailing. This Court held in *Heirs of Gregorio Lopez v. Development Bank of the Philippines*: The rule on "innocent purchasers or [mortgagees] for value" is applied more strictly when the purchaser or the mortgagee is a bank. Banks are expected to exercise higher degree of diligence in their dealings, including those involving lands. Banks may not rely simply on the face of the certificate of title. Had petitioner exercised the degree of diligence required of banks, it would have ascertained the ownership of one of the properties mortgaged to it.

3. **ID.; ID.; ID.; ID.; ID.; PETITIONER BANK NOT ENTITLED TO DAMAGES DESPITE LOSSES SINCE IT DID NOT EXERCISE THE REQUIRED DUE DILIGENCE.—** [T]his Court affirms the removal of the damages since petitioner did not seek relief from the Court with clean hands. Petitioner may have incurred losses when it entered into the mortgage transaction with respondents Spouses Santos and Eduardo, and the corresponding foreclosure sale. However, the losses could have been avoided if only petitioner exercised the required due diligence.

APPEARANCES OF COUNSEL

LBP Litigation Department for petitioner.

Nardo A. Capulong for respondents Spouses Ireneo and Nenita Santos & Eduardo Sonza.

Alfonso and Associates Law Offices for respondent Lorenzo Musni.

D E C I S I O N

LEONEN, *J.*:

Banks must show that they exercised the required due diligence before claiming to be mortgagees in good faith or innocent purchasers for value.

This is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, praying that the assailed Decision[2] dated February 29, 2012, and the Resolution[3] dated March 12, 2013 of the Court of Appeals in CA-G.R. CV No. 92304 be nullified and set aside, and that judgment to the complaint against petitioner be rendered dismissed.[4] Petitioner likewise prays that the deleted award be reinstated should the assailed Decision and Resolution be affirmed.[5]

Respondent Lorenzo Musni (Musni) was the compulsory heir of Jovita Musni (Jovita), who was the owner of a lot in Comillas, La Paz, Tarlac, under Transfer of Certificate Title (TCT) No. 07043.[6]

Musni filed before the Regional Trial Court of Tarlac City a complaint for reconveyance of land and cancellation of TCT No. 333352 against Spouses Nenita Sonza Santos and Ireneo Santos (Spouses Santos), Eduardo Sonza (Eduardo), and Land Bank of the Philippines (Land Bank).[7]

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[1] *Rollo*, pp. 9-31.

[2] *Id.* at 32-50. The Decision was penned by Associate Justice Agnes Reyes-Carpio, and concurred in by Associate Justices Jose C. Reyes, Jr., and Priscilla J. Baltazar-Padilla of the Tenth Division.

[3] *Id.* at 60-61. The Resolution was penned by Associate Justice Agnes Reyes-Carpio, and concurred in by Associate Justices Jose C. Reyes, Jr., and Priscilla J. Baltazar-Padilla of the Former Tenth Division.

[4] *Id.* at 28, Petition for Review.

[5] *Id.*

[6] *Id.* at 51.

[7] *Id.*

Musni alleged that Nenita Sonza Santos (Nenita) falsified a Deed of Sale, and caused the transfer of title of the lot in her and her brother Eduardo's names. He claimed that the Spouses Santos and Eduardo mortgaged the lot to Land Bank as security for their loan of ₱1,400,000.00.[8]

Musni said that he was dispossessed of the lot when Land Bank foreclosed the property upon Nenita and Eduardo's failure to pay their loan. Later, the titles of the lot and another foreclosed land were consolidated in TCT No. 333352, under the name of Land Bank.[9]

Musni claimed that he filed a criminal case against Nenita and Eduardo for falsification of a public document.[10] The case was filed before the Municipal Trial Court of Tarlac, and was docketed as Criminal Case No. 4066-99.[11] According to him, the municipal trial court rendered a decision finding Nenita guilty of the imputed crime.[12]

In their Answer, the Spouses Santos admitted having mortgaged the lot to Land Bank. They also admitted that the property was foreclosed because they failed to pay their loan with the bank. Moreover, they confirmed that Nenita was convicted in the falsification case filed by Musni.[13]

In defense, the Spouses Santos alleged that they, together with Eduardo, ran a lending business under the name "Sonza and Santos Lending Investors." As security for the loan of ₱286,640.82, Musni and his wife executed a Deed of Sale over the lot in favor of the Spouses Santos. The title of the lot was then transferred to Nenita and Eduardo. The lot was then mortgaged to Land Bank, and was foreclosed later.[14]

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[8] *Id*. at 51-52.

[9] *Id*. at 52.

[10] *Id*. at 51.

[11] *Id*. at 41.

[12] *Id*. at 51-52.

[13] *Id*. at 52-53.

[14] *Id*.

Land Bank filed its Amended Answer with Counterclaim and Cross-claim.[15] It asserted that the transfer of the title in its name was because of a decision rendered by the Department of Agrarian Reform Adjudication Board, Region III. It countered that its transaction with the Spouses Santos and Eduardo was legitimate, and that it verified the authenticity of the title with the Register of Deeds. Further, the bank loan was secured by another lot owned by the Spouses Santos, and not solely by the lot being claimed by Musni.[16]

Land Bank prayed that it be paid the value of the property and the expenses it incurred, should the trial court order the reconveyance of the property to Musni.[17]

On June 27, 2008, the trial court rendered a Decision,[18] in favor of Musni. It relied on the fact that Nenita was convicted of falsification of the Deed of Sale. The trial court found that Musni did not agree to sell the property to the Spouses Santos and Eduardo. In addition, the amount of Musni's indebtedness was an insufficient consideration for the market value of the property. Lastly, the sale was executed before the loan's maturity.[19]

The trial court also found that Land Bank was not an "innocent purchaser for value[.]"[20] The institution of the criminal case against Nenita should have alerted the bank to ascertain the ownership of the lot before it foreclosed the same.[21]

The dispositive portion of the Decision reads:

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[15] *Id*. at 131-138.

[16] *Id*. at 53.

[17] *Id*. at 136.

[18] *Id*. at 51-59. The Decision was penned by Judge Bitty G. Viliran of the Regional Trial Court of Tarlac City, Branch 65.

[19] *Id*. at 35.

[20] *Id*. at 58.

[21] *Id*.

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff Lorenzo Musni and against the defendant[s] Sps. Nenita Sonza and Ireneo Santos and the Land Bank of the Philippines.

1. Ordering the land covered by TCT No. 333352 in the name of the Land Bank of the Philippines be conveyed to plaintiff Lorenzo Musni by defendant Land Bank of the Philippines

2. Ordering the defendant Nenita Sonza-Santos and Eduardo Santos to pay to the Land Bank of the Philippines Php.448,000.00 which in the amount of damages the latter suffered by reason of the mortgage, foreclosure and consolidation of the land in its name.

3. Ordering the defendant Spouses Nenita S. Sonza and Ireneo Santos and defendant Land Bank of the Philippines to pay attorney's fees in the amount of Php.30,000.00; and

4. Ordering the defendants to pay the cost of the suit.

SO ORDERED.[22]

Land Bank and Nenita separately moved for reconsideration, which were both denied by the trial court in an Omnibus Order[23] dated September 11, 2008.

Land Bank and Spouses Santos separately appealed to the Court of Appeals.[24] In its appeal,[25] Land Bank reiterated that "it has demonstrated, by a preponderance of evidence, that it is a mortgagee in good faith and a subsequent innocent purchaser for value; as such, its rights as the new owner of the subject property must be respected and protected by the courts."[26]

The Court of Appeals rendered a Decision[27] on February 29, 2012. It found that the sale of the lot between Musni, and the

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[22] *Id*. at 58-59.

[23] *Id*. at 144.

[24] *Id*. at 37-40.

[25] *Id*. at 147-173.

[26] *Id*. at 171.

[27] *Id*. at 32-50.

Spouses Santos and Eduardo, was null and void since Nenita was convicted for falsifying the signatures of Jovita and Musni in the Deed of Sale. Therefore, the Spouses Santos and Eduardo could not have been the absolute owners, who could validly mortgage the property.[28]

The Court of Appeals also held that Land Bank was neither a mortgagee in good faith nor an innocent purchaser for value for failure to observe the due diligence required of banks.[29]

The Court of Appeals affirmed with modifications the Decision of the trial court:

> **WHEREFORE**, in view of the foregoing, the assailed Decision rendered by the Regional Trial Court of Tarlac City, Branch 65 is hereby **AFFIRMED** with **MODIFICATIONS**:
>
> 1. The Real Estate Mortgage Contract executed between Land Bank of the Philippines and appellants Irineo and Nenita Santos is hereby declared **NULL** and **VOID**.
> 2. The Extra-judicial Foreclosure Sale over the two parcels of land subject of the mortgage is hereby declared **NULL** and **VOID.**
> 3. The Land Bank of the Philippines is hereby directed to reconvey TCT No. 333352 registered in its name to appellee Musni.
> 4. Appellee Musni is directed to pay appellants Santos the amount of Php286,640.82 with 12% legal interest per annum from date of judicial demand on March 15, 2002.
>
> **SO ORDERED.**[30] (Emphasis in the original)

Land Bank moved for reconsideration, which was denied by the Court of Appeals in a Resolution dated March 12, 2013.[31]

On May 6, 2013, Land Bank filed a Petition for Review before this Court against Musni, Eduardo, and the Spouses Santos.[32]

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[28] *Id*. at 41-42.

[29] *Id*. at 42-46.

[30] *Id*. at 49-50.

[31] *Id*. at 60-61.

[32] *Id*. at 9.

Petitioner reiterates that it observed good faith in both the mortgage transaction, and the foreclosure sale. From the time the property was mortgaged to it until the title was consolidated in its name, no one filed an adverse claim or notice of *lis pendens* with the Registry of Deeds. Petitioner argues that it has complied with all the requirements of foreclosure, including the required publication and posting.[33]

Petitioner asserts that upon examination of the titles offered by the Spouses Santos as security for their loan, it found neither infirmity nor defect.[34] It also "verified [the Spouses Santos'] financial capability and credit worthiness."[35] The bank ascertained the ownership of the subject lot by conducting the following:[36]

a) Verifications with the proper Registry of Deeds, the Municipal treasurer's office, the police and proper courts concerned, as well interview (sic) with adjoining property owners;

b) Confirmation that the Spouses Santos were up to date in paying realty taxes and had no record of tax delinquencies;

c) Verification that Spouses Santos have no pending criminal and civil cases;

d) Findings that LBP found no adverse information against the spouses Santos from owners of neighboring properties;

e) Findings that there was no notice of adverse claim or lis pendens filed or registered by Lorenzo Musni or by any person with the concerned Registry of Deeds and have it annotated on TCT No. 304649;

f) Inspection of TCT No. 07403 (source of TCT No. 304649) indicates that the same was cancelled and TCT No. 304649 was issued in the name of Nenita Santos and Eduardo Santos (sic), by virtue of the Decision of the [Department of Agrarian

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[33] *Id*. at 20-21.

[34] *Id*. at 22.

[35] *Id*. at 23.

[36] *Id*. at 22-23.

> Reform] Adjudication Board, Region III, Diwa ng Tarlac, Tarlac[.][37]

Moreover, petitioner contends that the mortgage was executed before the institution of the criminal case against one of the mortgagors.[38] It insists that the "filing of the [criminal] complaint could not operate as a notice to the whole world."[39] Since the bank "was not a party to the case[,] it could not have been notified of the existence of the [criminal] complaint."[40]

Petitioner also assails the Court of Appeal's deletion of the ₱448,000.00 award in its favor. This constitutes the amount suffered by the bank in its undertakings with respondents Spouses Santos. According to petitioner, the alleged falsification of the Deed of Sale should not affect the bank since it was not a party to the transaction between respondent Musni, and respondents Spouses Santos and Eduardo.[41]

Petitioner prays that the February 29, 2012 Decision and the March 12, 2013 Resolution of the Court of Appeals be set aside, and that the Complaint against it be dismissed. If the Decision is sustained, petitioner prays that the award of ₱448,000.00 be reinstated.[42]

On April 17, 2015, respondents Spouses Santos and Eduardo filed their Comment.[43] They countered that the deletion of the award in favor of petitioner was correct since the loss that petitioner allegedly suffered did not result to a compensable injury.[44]

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[37] *Id*.

[38] *Id*. at 23.

[39] *Id*. at 24.

[40] *Id.*

[41] *Id*. at 26-27.

[42] *Id.* at 28.

[43] *Id*. at 207-208.

[44] *Id*.

On April 28, 2015, respondent Musni filed his Comment.[45] He pointed out that petitioner's argument that it transacted in good faith was a factual issue, which could no longer be raised in a Rule 45 petition.[46] Further, both the trial court and the Court of Appeals ruled against petitioner's allegation of good faith.[47]

On July 31, 2015, petitioner filed its Reply,[48] reiterating its arguments in its Petition.

In a Resolution[49] dated November 11, 2015, this Court required the parties to submit their respective memoranda.

Petitioner submitted its Memorandum[50] on February 26, 2016. Respondents Spouses Santos and Eduardo filed their Memorandum[51] on February 23, 2016, while respondent Musni filed his Memorandum[52] on March 2, 2016. The parties rehashed the arguments in their earlier pleadings.

This Court resolves the following issues:

1. Whether petitioner is a mortgagee in good faith and an innocent purchaser for value; and

2. Whether petitioner is entitled to the award of damages.

I

Petitioner is neither a mortgagee in good faith nor an innocent purchaser for value.

The determination of whether petitioner acted in good faith is a factual matter, which cannot be raised before this Court in

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[45] *Id*. at 214-220.

[46] *Id*. at 217.

[47] *Id*. at 218.

[48] *Id*. at 225-228.

[49] *Id*. at 231-232.

[50] *Id.* at 238-259.

[51] *Id*. at 236-A-236-G.

[52] *Id*. at 261-269.

a Rule 45 petition.[53] To emphasize, "this Court is not a trier of facts and does not normally embark on a re-examination of the evidence adduced by the parties during trial."[54] Although this rule admits of exceptions,[55] the present case does not fall under any of them.

Nevertheless, this Court recognized the relevance of the concept of a mortgagee, and a purchaser in good faith in *Andres, et al. v. Philippine National Bank*:[56]

> The doctrine protecting mortgagees and innocent purchasers in good faith emanates from the social interest embedded in the legal concept granting indefeasibility of titles. The burden of discovery of invalid transactions relating to the property covered by a title appearing regular on its face is shifted from the third party relying on the title to the co-owners or the predecessors of the title holder. Between the third party and the co-owners, it will be the latter that will be more intimately knowledgeable about the status of the property and its history. The costs of discovery of the basis of invalidity, thus, are better borne by them because it would naturally be lower. A reverse presumption will only increase costs for the economy, delay transactions, and, thus, achieve a less optimal welfare level for the entire society.[57] (Citation omitted)

In *Philippine Banking Corporation v. Dy, et al.*,[58] this Court explained this concept in relation to banks:

> Primarily, it bears noting that the doctrine of "mortgagee in good faith" is based on the rule that all persons dealing with property covered by a Torrens Certificate of Title are not required to go beyond what appears on the face of the title. This is in deference to the

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[53] *Philippine National Bank v. Heirs of Militar*, 504 Phil. 634, 643 (2005) [Per *J.* Ynares-Santiago, First Division].

[54] *Id*.

[55] See *Sia Tio, et al. v. Abayata, et al.*, 578 Phil. 731, 741-742 (2008) [Per *J.* Austria-Martinez, Third Division].

[56] 745 Phil. 459 (2014) [Per *J.* Leonen, Second Division].

[57] *Id*. at 473.

[58] 698 Phil. 750 (2012) [Per *J.* Perlas-Bernabe, Second Division].

public interest in upholding the indefeasibility of a certificate of title as evidence of lawful ownership of the land or of any encumbrance thereon. In the case of banks and other financial institutions, however, greater care and due diligence are required since they are imbued with public interest, failing which renders the mortgagees in bad faith. Thus, before approving a loan application, it is a standard operating practice for these institutions to conduct an ocular inspection of the property offered for mortgage and to verify the genuineness of the title to determine the real owner(s) thereof. The apparent purpose of an ocular inspection is to protect the "true owner" of the property as well as innocent third parties with a right, interest or claim thereon from a usurper who may have acquired a fraudulent certificate of title thereto.[59] (Citations omitted)

Further, in *Philippine National Bank v. Corpuz*:[60]

As a rule, the Court would not expect a mortgagee to conduct an exhaustive investigation of the history of the mortgagor's title before he extends a loan. But petitioner . . . is not an ordinary mortgagee; it is a bank. Banks are expected to be more cautious than ordinary individuals in dealing with lands, even registered ones, since the business of banks is imbued with public interest. It is of judicial notice that the standard practice for banks before approving a loan is to send a staff to the property offered as collateral and verify the genuineness of the title to determine the real owner or owners.[61] (Citations omitted)

On petitioner's claim that it was a mortgagee in good faith, the Court of Appeals held that petitioner "was actually remiss in its duty to ascertain the title of [respondents Eduardo and Nenita] to the property."[62] The Court of Appeals' Decision reads:

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[59] *Id*. at 757. See also *Cruz v. Bancom Finance Corporation*, 429 Phil. 225, 237-239 (2002) [Per *J*. Panganiban, Third Division], and *Metropolitan Bank and Trust Co., Inc. v. SLGT Holdings, Inc.*, 559 Phil. 914, 928-929 (2007) [Per *J*. Garcia, First Division].

[60] 626 Phil. 410 (2010) [Per *J*. Abad, Second Division].

[61] *Id*. at 412-413.

[62] *Rollo*, pp. 42-43.

During trial, appellant [Land Bank] presented its Account Officer Randy Quijano who testified that while it conducted a credit investigation and inspection of the subject property as stated in its Credit Investigation Report dated March 17, 1998, a perusal of the report and the testimony of the account officer failed to establish that the bank's standard operating procedure in accepting the property as security, including having investigators visit the subject property and appraise its value were followed.

At the most, the report and the testimonial evidence presented were limited to the credit investigation report conducted by Randy Quijano who, in turn relied on the report made by its field officers. [Land Bank's] field officers who allegedly visited the property and conducted interviews with the neighbors and verified the status of the property with the courts and the police were not presented. At the most, We find [Land Bank's] claim of exhaustive investigation was a just generalization of the bank's operating procedure without any showing if the same has been followed by its officers.

The Credit Investigation Report also does not corroborate the material allegations of [Land Bank] that verifications were made with the Treasurer's Office and the courts and the owners of the adjoining properties. For one, the report failed to mention the names of the adjoining owners or neighbors whom the credit investigation team were able to interview; second, the report did not mention the status of the realty taxes covering the property although Land Bank is now claiming that [Eduardo and Nenita] were up to date in paying the realty taxes. No certification from the Treasurer's Office was presented to prove [Land Bank's] claim that [Eduardo and Nenita] were the one[s] regularly paying the taxes on the said property.

Moreover, what further militates against the claim of [Land Bank's] good faith is the fact that TCT No. 304649 which was mortgaged to the bank, was issued by virtue of a Decision of the [Department of Agrarian Reform Adjudication Board] Region III dated December 29, 1997. The said Decision was, however, inscribed only on February 25, 1998, after the issuance of TCT No. 304649 on February 8, 1998. In addition, the property was mortgaged to [Land Bank] a few days after the inscription of the alleged Decision of the [Department of Agrarian Reform Adjudication Board]. This circumstance should have aroused a suspicion on the part of [Land Bank] and anyone who deliberately ignores a significant fact that would create suspicion in an otherwise reasonable person cannot be considered as a mortgagee in good faith.

We quote the following disquisitions of the trial court on the Land Bank's apparent bad faith in the transaction:

> "[Land Bank] however tried to show that the title of the land owned by Jovita Musni was cancelled by virtue of a decision of the [Department of Agrarian Reform] Adjudication Board, Region III and in lieu thereof TCT No. 304649 was issued in favor of Nenita Sonza et.al. The date of the decision in (sic) December 29, 1997 but inscribed only on February 25, 1998. If this were so, why is it that Nenita Santos was issued TCT No. 304649 on February 8, 1998, before the Decision was inscribed. Defendant Nenita Santos never mentioned any decision of the [Department of Agrarian Reform Adjudication Board] awarding the lot to her."

. . . . . .

The cited case of *Philippine Veterans Bank vs. Monillas* is not controlling to Land Bank's case. In the said case, [Philippine Veterans Bank] has the right to rely on what appears on the certificate of title because of the absence of any infirmity that would cast cloud on the mortgagor's title. The situation is different in the present case since the certificate of title (TCT No. 304649) apparently shows the defect in the owner's title. As previously stated, the title of [Eduardo and Nenita] to the subject property was dubious because the certificate of title was issued before the inscription of the Decision of the [Department of Agrarian Reform Adjudication Board]. Accordingly, Land Bank cannot be considered a mortgagee in good faith.[63] (Citations omitted)

The Court of Appeals also found that petitioner was not an innocent purchaser for value:

> Neither can We also consider [Land Bank] as an innocent purchaser for value because the subject property was foreclosed on May 4, 1999 while the complaint for falsification was filed on March 4, 1999.
>
> A purchaser in good faith is one who buys property without notice that some other person has a right to or interest in such property and pays its fair price before he has notice of the adverse claims and

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[63] *Id*. at 43-46.

interest of another person in the same property. Clearly, the factual circumstances as afore-cited surrounding the acquisition of the disputed property do not make [Land Bank] an innocent purchaser for value or a purchaser in good faith. Thus, We are in accord with the ruling of the trial court in that:

> "In the instant case, the Court cannot consider the Land Bank of the Philippines as innocent purchaser for value. With all its resources, it could have ascertained how Nenita Sonza acquired the land mortgaged to it and later foreclosed by it. The fact the land (sic) was foreclosed after Criminal Case No. 4066-99 was instituted should have warned it. The questionable ownership of Nenita Sonza for it and its employees to obtain knowledge of the questionable transfer of the land to Nenita Sonza. Its failure to take the necessary steps or action shall make the bank liable for damages. The bank shall be responsible for its and its employer shortcomings."[64] (Citations omitted)

Petitioner's defense that it could not have known the criminal action since it was not a party to the case and that there was no notice of *lis pendens* filed by respondent Musni, is unavailing. This Court held in *Heirs of Gregorio Lopez v. Development Bank of the Philippines*:[65]

> The rule on "innocent purchasers or [mortgagees] for value" is applied more strictly when the purchaser or the mortgagee is a bank. Banks are expected to exercise higher degree of diligence in their dealings, including those involving lands. Banks may not rely simply on the face of the certificate of title.[66]

Had petitioner exercised the degree of diligence required of banks, it would have ascertained the ownership of one of the properties mortgaged to it.

Where "the findings of fact of the trial courts are affirmed by the Court of Appeals, the same are accorded the highest

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[64] *Id.* at 46.

[65] G.R. No. 193551, November 19, 2014, 741 SCRA 153 [Per *J.* Leonen, Second Division].

[66] *Id.* at 168-169.

degree of respect and, generally, will not be disturbed on appeal[;] Such findings are binding and conclusive on this Court."[67] Accordingly, this Court finds no reason to disturb the findings of the Court of Appeals, which affirmed the findings of the trial court, that petitioner is neither a mortgagee in good faith nor an innocent purchaser for value.

II

Petitioner is not entitled to the award of ₱448,000.00 as damages.

In its Decision, the trial court ordered respondents Nenita and Eduardo to pay petitioner damages in the amount equivalent to the appraised value of the property being claimed by respondent Musni.[68] The Court of Appeals deleted the award, and held that:

> In so ruling, the trial court resorted to a partial nullification of the real estate mortgage executed by [respondents Spouses Santos] and [Land Bank] because while maintaining the validity of the mortgage over the parcel of land with an area of 800 square meters, the trial court however, partially nullified the mortgage pertaining to the parcel of land containing an area of 24, 937 square meters.[69]

The Court of Appeals considered the grant of award as a partial extinguishment of the real estate mortgage, which is not allowed. Since the mortgage is indivisible, the Court of Appeals nullified the real estate mortgage involving the two properties, and deleted the award.[70]

Although the Court of Appeals' basis for deleting the award is erroneous, this Court affirms the removal on a different ground.

The Court of Appeals misconstrued the award given by the trial court. When the trial court awarded the amount of

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[67] *Manotok Realty, Inc. v. CLT Realty Development Corp.*, 512 Phil. 679, 706 (2005) [Per *J.* Sandoval-Gutierrez, Third Division].

[68] *Rollo*, p. 58.

[69] *Id.* at 48.

[70] *Id.* at 48-49.

₱448,000.00, it did so in representation of the damages that petitioner suffered "by reason of the mortgage, foreclosure[,] and consolidation of the land in its name."[71] The award was meant to compensate petitioner for the loss it suffered in transacting with respondents Spouses Santos and Eduardo.

Nonetheless, this Court affirms the removal of the damages since petitioner did not seek relief from the Court with clean hands. Petitioner may have incurred losses when it entered into the mortgage transaction with respondents Spouses Santos and Eduardo, and the corresponding foreclosure sale. However, the losses could have been avoided if only petitioner exercised the required due diligence.

This Court notes that both lower courts erroneously reconveyed TCT No. 333352 to respondent Musni, despite finding that only one of the properties covered by the title was in question. Thus, the consolidated title should be cancelled before the reconveyance of the subject property.

WHEREFORE, the petition is **DENIED**. The Court of Appeals' Decision dated February 29, 2012, and the Resolution dated March 12, 2013 are **AFFIRMED** with the following **MODIFICATIONS**:

1. TCT No. 333352 is hereby **CANCELLED**;
2. Eduardo Sonza and Nenita Sonza Santos are hereby ordered to reconvey TCT No. 304649 to Lorenzo Musni; and
3. Lorenzo Musni is directed to pay Nenita Sonza Santos and Ireneo Santos the amount of ₱286,640.82, with legal interest at the rate of 12% per annum computed from the date of judicial demand on March 15, 2002 up to June 30, 2013, and at 6% per annum from July 1, 2013 until full payment.

SO ORDERED.

Carpio (Chairperson), *Peralta, Mendoza,* and *Jardeleza, JJ.,* concur.

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[71] *Id.* at 58.

SECOND DIVISION

[G.R. No. 208506. February 22, 2017]

MAHARLIKA A. CUEVAS, *petitioner, vs.* **ATTY. MYRNA V. MACATANGAY, in her capacity as Director IV of the Civil Service Commission and MEMBERS OF THE BOARD OF THE NATIONAL MUSEUM, namely; VIRGILIO ALMARIO, CORAZON ALVINA, SEN. EDGARDO ANGARA, JEREMY BARNS, FELIPE DE LEON, CONG. SALVADOR ESCUDERO III, MARINELLA K. FABELLA, FR. RENE PIO B. JAVELLANA, MARIA ISABEL G. ONGPIN, FELICE P. STA. MARIA and BENITO S. VERGARA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE OR QUASI-JUDICIAL BODIES ARE ACCORDED MUCH RESPECT AS THEY ARE SPECIALIZED TO RULE ON MATTERS FALLING WITHIN THEIR JURISDICTION; EXCEPTIONS.— As a general rule, only questions of law raised *via* a petition for review under Rule 45 of the Rules of Court are reviewable by this Court. Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence. However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present: "1. [W]hen the findings are grounded entirely on speculations, surmises or conjectures; 2. when the inference made is manifestly mistaken, absurd or impossible; 3. when there is grave abuse of discretion; 4. when the judgment is based on a misapprehension of facts; 5. when the findings of fact are conflicting; 6. when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions

of both the appellant and the appellee; 7. when the findings are contrary to that of the trial court; 8. when the findings are conclusions without citation of specific evidence on which they are based; 9. when the facts set forth in the petition[,] as well as in the petitioner's main and reply briefs[,] are not disputed by the respondent; 10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [and] 11. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion."

2. ID.; ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WILL NOT BE ENTERTAINED WHERE APPEAL IS AVAILABLE.— The existence and availability of the right of appeal prohibits the resort to *certiorari* because one of the requirements for the latter remedy is the unavailability of appeal. Clearly, petitioner should have moved for the reconsideration of CSC Resolution No. 10-1438 containing the Commission's resolution as to the invalidity of his appointment and, thereafter, should have filed an appeal.

APPEARANCES OF COUNSEL

Librojo and Associates Law Offices for petitioner.
Office of the Solicitor General for public respondents.

D E C I S I O N

PERALTA, *J.*:

For this Court's resolution is the Petition for Review on *Certiorari* under Rule 45 With Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction dated September 18, 2013 of petitioner Maharlika A. Cuevas that seeks to reverse and set aside the Decision[1]

[1] Penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Japar B. Dimaampao and Elihu A. Ybañez, concurring; *rollo*, pp. 36-48.

dated August 7, 2013 of the Court of Appeals (*CA*), affirming Civil Service Commission (*CSC*) Resolution No. 10-1438[2] invalidating petitioner's appointment as Director III of the National Museum.

The facts follow.

Petitioner Maharlika Cuevas was one of the employees of the National Museum vying for the vacant position of Director III, and on October 23, 2008, Board Resolution No. 03-2008 was issued by the National Museum Board of Trustees, recommending for appointment Mr. Cecilio Salcedo and petitioner for the said position.

The then National Museum Board of Trustees Chairman, Antonio O. Cojuangco, appointed petitioner as Director III under a temporary status on November 24, 2008.

Unsatisfied, Elenita D.V. Alba, another applicant for the same position, filed a protest with the CSC, the latter referring the matter to the National Museum for resolution. In a letter to the CSC, dated August 14, 2009 by Director IV Corazon S. Alvina, the National Museum dismissed the protest and informed the CSC that the decision on petitioner's appointment is final.

Thereafter, on November 24, 2009, the then National Museum Board of Trustees Chairman, Antonio O. Cojuangco, appointed petitioner as Director III on a permanent status.

Still aggrieved, Elenita D.V. Alba appealed the dismissal of her protest to the CSC insisting that she is the most qualified for the contested position, and on July 27, 2010, the CSC issued Resolution No. 10-1438 finding no merit on Alba's claim. The CSC, however, found that the issuance of petitioner's appointment was not in accordance with Section 11 of Republic Act (*R.A.*) No. 8492, or the *National Museum Act of 1998*, which states that it is the Board of Trustees that shall appoint the Assistant Director or Director III and not the Chairman of the National Museum, thus:

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[2] *Rollo*, pp. 103-109.

Sec. 11. *Director of the National Museum; duties, programs and studies; annual report to Congress.* – The Board of Trustees shall appoint the Director of the Museum and two (2) Assistant Directors. The Director shall be in charge of the over-all operations of the Museum and implement the policies set by the Board of Trustees and programs approved by it. The Director shall have a proven track record of competent administration and shall be knowledgeable about museum management. The Director, assisted by two (2) Assistant Directors, shall be in charge of the expanded archeological sites and the Regional Museum Division of the Museum.

The CSC further stated that there is nothing under the National Museum Act of 1998 that expressly authorizes the Board of Trustees to delegate any of its powers to the Chairman of the National Museum or to any official of the National Museum, thus:

In the case at hand, the Board of Trustees (BOT), which is the policy-making body and appointing authority of the National Museum under R.A. No. 8492, was relegated to function as the Personnel Selection Board (PSB) which subsequently recommended to then Chairman Cojuangco the appointment of Cuevas for the position of Director III. As such, the BOT abdicated to then Chairman Cojuangco its discretionary power to appoint the Director position. x x x

x x x x x x x x x

Unlike the Higher Education Modernization Act of 1997 (R.A. No. 8292) which expressly allows Boards of State Universities and Colleges (SUCS) to delegate its powers, there is nothing under the National Museum Act of 1998 that expressly authorizes the BOT to delegate any of its powers to the Chairman of the National museum or to any official of the National Museum. Thus, in absence of statutory authority, the National Museum Board of Trustees may not alienate or surrender its discretional power. In short, the exercise by then Chairman Cojuangco of the appointing power is not valid and the approval of Cuevas' temporary appointment should be recalled.

x x x x x x x x x

In fine, considering that the exercise by then Chairman Cojuangco of the appointing power is not valid, the approval of Cuevas' temporary appointment should be recalled.

WHEREFORE, the appeal of Elenita D.V. Alba, Curator II, National Museum (NM) is **GRANTED**. Accordingly, the dismissal of her protest by NM Chairman Antonio O. Cojuangco against the promotional appointment of Maharlika A. Cuevas as Director III under temporary status is **REVERSED AND SET ASIDE**. The approval of Cuevas' temporary appointment as Director III by the Civil Service Commission, National Capital Region is **RECALLED**.[3]

Due to the above Resolution, Director Jocelyn Patrice L. Deco, Director II of the CSC Field Office-National Museum, sent a letter dated October 14, 2010 to Director Jeremy Barns, Director IV of the National Museum, forwarding the invalidated permanent appointment of petitioner as Director III contained in CSC Resolution No. 10-1438 dated July 27, 2010.[4]

On October 21, 2010, Director Jeremy Barns wrote the CSC asking for a clarification and reconsideration of the October 14, 2010 letter. The CSC replied in a letter dated June 27, 2011 declaring that its resolution is final and executory because the proper party – the appointing authority or the appointee, the petitioner, in this case, failed to appeal the resolution as provided by the CSC Rules. According to the CSC, the records showed that the National Museum duly received the October 14, 2010 letter, copy of which was furnished the petitioner and the appeal from CSC Resolution No. 10-1438 should have been made on or before October 29, 2010.[5]

On August 2, 2011, petitioner moved for the reconsideration of the June 27, 2010 letter. He claimed that he received the letter dated June 27, 2010 on July 18, 2011, and it was the first time that he learned of the matter regarding his appointment. He also argued that his appointment was procedurally sound.[6]

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[3] *Id.* at 107-109.

[4] *Id.* at 103.

[5] *Id.* at 37-38.

[6] *Id.* at 38-40.

The National Museum then posted a bulletin of vacant positions, including that of petitioner's, on August 12, 2011. Petitioner, thereafter, wrote a letter to the National Museum clarifying that a motion for reconsideration had been filed before the CSC and it was pending resolution and as such, his position cannot be considered as vacant.[7]

On October 12, 2011, petitioner received a copy of the CSC's letter dated September 26, 2011 denying his motion, thus:

> Please be informed that said letter to Director Barns is not the main action recalling and invalidating your appointment as Director III but a mere clarification on the effects thereof, hence, it is not the proper subject of a motion for reconsideration or appeal.
>
> x x x x x x x x x
>
> Moreover, records of this Office clearly show that the invalidation of said appointments was duly received by the National Museum on October 14, 2010 and you were furnished a copy thereof. x x x
>
> Thus, your claim that you did not receive any information relative to the recall and invalidation of your appointments has no basis.[8]

Petitioner then elevated the case to the CA through a petition for *certiorari* under Rule 65 of the Rules of Court alleging that the CSC gravely abused its discretion when it sent its letter-responses dated June 27, 2011 and September 26, 2011 to the National Museum. On August 7, 2013, the CA denied the petition and ruled that CSC Resolution No. 10-1438 invalidating petitioner's appointment stands, thus:

> **WHEREFORE**, the petition is **DENIED**. CSC Resolution No. 10-1438 invalidating petitioner's appointment **STANDS**.
>
> **SO ORDERED**.[9]

The CA ruled that the assailed orders of the CSC are only letter-responses and not the orders contemplated by the Rules

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[7] *Id*. at 40.

[8] *Id*. at 41.

[9] *Id*. at 47.

which can be assailed in a petition for *certiorari*. According to the CA, petitioner should have sought reconsideration of CSC Resolution No. 10-1438 which invalidated his appointment and which was communicated to the National Museum, copy furnished the petitioner, on October 14, 2010; and an appeal should have been filed instead of a letter of clarification and reconsideration.

Hence, the present petition with the following issues presented:

I.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED SERIOUS AND GRAVE ERROR IN DECLARING THAT THE REMEDY OF *CERTIORARI* UNDER RULE 65 WAS NOT THE PROPER REMEDY UNDER THE CIRCUMSTANCES

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND GRAVE ERROR IN RULING THAT THE RESPONDENT CIVIL SERVICE COMMISSION DID NOT COMMIT GRAVE ABUSE OF DISCRETION[10]

Citing *National Development Company v. The Collector of Customs*,[11] petitioner argues that even letter-responses can be subjects of a petition for *certiorari* if acted with grave abuse of discretion. Petitioner further asserts that he was appointed by the proper appointing authority or the National Museum Board of Trustees, based on the Minutes of the special meeting of the same Board held on October 21, 2008.

In their Comment dated February 11, 2014, the respondents, as represented by the Office of the Solicitor General (*OSG*), insist that the CA correctly ruled that the communications between the National Museum and the CSC are not the proper subjects of a petition for *certiorari*. The OSG also argues that petitioner's appointment was not issued by the proper appointing

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[10] *Id.* at 16.

[11] 118 Phil. 1265, 1269 (1963).

authority because the resolution of the National Museum Board of Trustees takes precedence over the minutes of the board meeting.

On January 21, 2015, this Court dismissed the present petition for failure of petitioner to obey a lawful order of the Court pursuant to Section 5(e), Rule 56 of the 1997 Rules of Civil Procedure. However, upon Motion for Reconsideration[12] of petitioner, this Court set aside its earlier resolution and reinstated the petition on June 22, 2015.[13]

After a careful review of the arguments presented, this Court finds the petition unmeritorious.

As a general rule, only questions of law raised *via* a petition for review under Rule 45 of the Rules of Court[14] are reviewable by this Court.[15] Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.[16] However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present:

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[12] *Rollo*, pp. 127-136.

[13] *Id.* at 137.

[14] Sec. 1, Rule 45, Rules of Court provides:

Filing of petition with Supreme Court. — A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

[15] *Heirs of Pacencia Racaza v. Spouses Abay-Abay*, 687 Phil. 584, 590 (2012).

[16] *Merck Sharp and Dohme (Phils.), et al. v. Robles, et al.*, 620 Phil. 505, 512 (2009).

1. [W]hen the findings are grounded entirely on speculations, surmises or conjectures;
2. when the inference made is manifestly mistaken, absurd or impossible;
3. when there is grave abuse of discretion;
4. when the judgment is based on a misapprehension of facts;
5. when the findings of fact are conflicting;
6. when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
7. when the findings are contrary to that of the trial court;
8. when the findings are conclusions without citation of specific evidence on which they are based;
9. when the facts set forth in the petition[,] as well as in the petitioner's main and reply briefs[,] are not disputed by the respondent;
10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [and]
11. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[17]

The question as to whether the assailed orders of the CSC are mere letter-responses or the orders contemplated by the Rules that can be assailed in a petition for *certiorari* under Rule 65 is factual and is not within the ambit of a petition under Rule 45. Nevertheless, even if this Court relaxes such procedural infirmity, the present petition must still fail.

Section 1, Rule 65 of the Rules of Court reads:

Section 1. *Petition for Certiorari***.** When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment

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[17] *Co v. Vargas*, 676 Phil. 463, 471 (2011).

be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the **judgment, order or resolution** subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

According to petitioner, a letter-response can be the subject of a petition for *certiorari* as already ruled by this Court in *National Development Company v. Collector of Customs* wherein a letter-response for the Collector of Customs was struck down for having been committed with grave abuse of discretion. However, as correctly observed by the OSG, the case cited by petitioner is misapplied. In *National Development Company v. Collector of Customs*, the subject letter was, in fact, a resolution or decision that found therein petitioners guilty of a violation of the Tariff and Customs Code, while in the present petition, the letter-responses of the CSC did not decide the issue on the validity or invalidity of petitioner's appointment. Thus, as aptly observed by the OSG:

35. In the NDC case, the letter issued by the Collector of Customs, in fact, constituted a resolution or decision finding a violation apparently committed by the petitioner therein under Section 2521 of the Tariff and Customs Code, thereby imposing a fine of ₱5,000.00. Said resolution was issued without giving the owner or operator a chance to controvert the alleged violation. Hence, the resolution was deemed to have been issued in deprivation of therein petitioner's right to due process.

36. In the instant case, the June 27, 2011 communication of the CSC addressed to NM **merely answered the clarifications requested by NM Director IV Jeremy Barns in a letter dated October 21, 2011, regarding the invalidation of petitioner's appointment**. The same can also be said of the September 26, 2011 letter of the CSC to petitioner, addressing the latter's Motion for Reconsideration in a letter dated August 1, 2011. **The June 27, 2011 and September 26, 2011 CSC letters did not decide the issue pertaining to the validity or the invalidity of petitioner's appointment which,**

precisely, was the subject of CSC Resolution No. 10-1438. The letter merely stated the procedural rules ought to be followed by parties who wish to appeal decisions of the CSC, which procedure, both the appointing authority, the NM BOT, and petitioner, failed to avail of within the reglementary period.[18]

It is, therefore, CSC Resolution No. 10-1438 that should have been the subject of an appeal as it contained the decision of the said Commission as to the invalidity of petitioner's appointment as Director III of the National Museum. On point is the finding of the CA, thus:

> We perused the assailed orders and find that they are only letter-responses of the CSC and not the orders contemplated by the Rules which can be assailed in a petition on certiorari. As aptly explained by the CSC, petitioner should have sought reconsideration of CSC Resolution No. 10-1438 which invalidated his appointment and which was communicated to the National Museum, copy furnished the petitioner, on October 14, 2010; and an appeal should have been filed instead of a letter seeking clarification and reconsideration as was done by Director Barns on October 21, 2010. Since what was filed is a letter of clarification and reconsideration, it was acted upon in the same manner by the CSC in its letter-reply dated June 27, 2011, explaining that the recall and invalidation of petitioner's appointment can only be reconsidered through an appeal to the CSC, by the appointing authority or the appointee, within fifteen days from receipt of the decision, pursuant to CSC Memorandum Circular 20, s. 1998 as held in Francisco Abella, Jr. v. CSC; the CSC claimed that per records, the notice was properly served and received by the addressees such that the period to appeal had already prescribed. It is this letter-reply that petitioner filed a reconsideration on, claiming that he did not receive notice of the invalidation of his appointment. However, petitioner's denial is belied by the statement in his Petition, properly pointed out by the CSC, that:
>
> > On 21 October 2010, Dir. Barns wrote Dir. Deco of the CSC Field Office requesting clarification and reconsideration of the invalidation by the CSC of the said appointment. It is stressed that Dir. Barns did not officially inform herein petitioner of said invalidation, and seemingly Dir. Barns took it upon himself

[18] *Rollo*, pp. 20-21. (Emphasis in the original)

> to "handle" the said matter of invalidation. In fact, Director Barns verbally explained to petitioner that he (Barns) will take care of the whole thing and will not let anything happen to petitioner's position as long as he was the NM director.[19]

Thus, this is a classic case of resorting to the filing of a petition for *certiorari* when the remedy of an ordinary appeal can no longer be availed of. Jurisprudence is replete with the pronouncement that where appeal is available to the aggrieved party, the special civil action of *certiorari* will not be entertained —remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive.[20] The proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. This holds true even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision, order or resolution. The existence and availability of the right of appeal prohibits the resort to *certiorari* because one of the requirements for the latter remedy is the unavailability of appeal.[21] Clearly, petitioner should have moved for the reconsideration of CSC Resolution No. 10-1438 containing the Commission's resolution as to the invalidity of his appointment and, thereafter, should have filed an appeal. Sadly, failing to do so, petitioner utilized the special civil action of *certiorari*. And to make matters worse, petitioner questioned, not the proper resolution of the CSC, but the mere letter-responses of the same Commission.

Notwithstanding the above disquisitions, petitioner's claim that his appointment is valid because he was in fact appointed by the Board and not the Chairman as shown in the Minutes of the meeting still does not gain him any merit. In order for the Court to refer to the minutes of a meeting or a proceeding, the

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[19] *Id*. at 44-45.

[20] *PAGCOR v. CA, et al.*, 678 Phil. 513, 524 (2011), citing *Catindig v. Vda. de Meneses*, 656 Phil. 361, 375 (2011).

[21] *Spouses Dycoco v. CA, et al.*, 715 Phil. 550, 561 (2013), citing *Bugarin v. Palisoc*, 513 Phil. 59, 66 (2005).

subject Board resolution must at least be ambiguous or obscure; otherwise, if it is clear on its face, there is no need to resort to such action because a Board resolution takes precedence over the minutes of a meeting.[22] As correctly ruled by the CA:

> Petitioner argues that the CSC erred when it held that his appointment was invalid because it was made by the wrong appointing authority; although it would appear that the Resolution on his appointment of the National Museum shows that he was appointed by the Chairman and not the Board, the Minutes of the meeting regarding the matter shows otherwise; and, because of the ambiguity of the resolutions, resort to the Minutes is indispensable. We reviewed the pertinent resolutions and find no ambiguity or obscurity on its face; hence, there is no need to resort to the Minutes, for a board resolution takes precedence over the minutes of the meeting.[23]

The same reasoning is also aptly asserted by the OSG, thus:

x x x x x x x x x

> 75. Petitioner argues that resort to the Minutes of the meeting is necessary in the presence of vagueness and confusion regarding the provisions of the Resolutions. If such is the case, then no resort to the minutes is necessary because Board Resolution Nos. 02-2008 and 03-2008 issued by the BOT are from being ambiguous.
>
> 76. In both resolutions, the Chairman was categorically deemed as the appointing authority and not the BOT. This grant of authority is in violation of the clear provisions of R.A. No. 8492, particularly Section 11 thereof, which states:
>
> > Section 11. *Director of the National Museum; duties; programs and studies; annual report to Congress.* – The Board of Trustees shall appoint the Director of the Museum and two (2) Assistant Directors. The Director shall be in charge of the over-all operations of the Museum and implement the policies set by the Board of Trustees and programs approved by it. The Director shall have a proven track record of competent administration and shall be knowledgeable about Museum management.[24]

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[22] See *People v. Dumlao*, 599 Phil. 565 (2009).

[23] *Rollo*, pp. 46-47.

[24] *Id.* at 97.

Anent petitioner's Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, such is no longer necessary due to the above resolution and discussion of this Court.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 With Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction dated September 18, 2013 of petitioner Maharlika A. Cuevas is **DENIED** for lack of merit. Consequently, the Decision dated August 7, 2013 of the Court of Appeals is **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), *Mendoza, Perlas-Bernabe,*[*] and *Leonen, JJ.,* concur.

SECOND DIVISION

[G.R. No. 210307. February 22, 2017]

TRADEPHIL SHIPPING AGENCIES, INC.,/GREGORIO F. ORTEGA, *petitioners, vs*. **DANTE F. DELA CRUZ,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT; COMPENSATION FOR BENEFITS AND INJURY; PERMANENT AND TOTAL DISABILITY; THE RELIEF MAY BE GRANTED WHEN THE COMPANY-DESIGNATED PHYSICIAN FAILS TO

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Special Order No. 2416-P dated January 4, 2017.

DECLARE THE SEAFARER FIT TO WORK WITHIN A PERIOD OF 120 DAYS WHICH MAY BE EXTENDED UP TO A MAXIMUM OF 240 DAYS WHEN SUFFICIENT JUSTIFICATION EXISTS.— In *Vergara [vs. Hammonia Maritime Service, Inc.]*, the Court clarified that the rule on the failure by the company-designated physician to make a declaration of fitness to work within the 120-day period to constitute permanent total disability should not be applied in all situations. The specific context of the application should be considered in light of the application of all rulings, laws and implementing regulations. Harmonizing the POEA-SEC provision with Article 192(c)(1), in relation to Rule X, Section 2 of the Rules and Regulations Implementing Book IV of the Labor Code (IRR), the Court in *Vergara* held that the treatment of the company-designated physician may be extended up to a maximum of 240 days when circumstances warranted it. x x x In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, the Court essentially ruled that the 240-day period remained an exception which should not be applied unconditionally. The Court explained that to invoke the 240-day period, the company-designated physician must provide a sufficient justification to extend the original 120-day period. Otherwise, under the law, the seafarer must be granted the relief of permanent and total disability benefits as a consequence of such non-compliance. x x x [I]t is clear that the 120-day rule and the subsequent decisions applying it are consistent with the 240-day rule in *Vergara*. The Court had already harmonized its various rulings with respect to the periods within which a seafarer may be declared fit or unfit for sea duties for the purposes of his claim for permanent and total disability compensation. To emphasize, the general rule remains to be that **-the company-designated physician must declare the seafarer fit for sea duties within a period of 120 days; otherwise, the latter must be declared totally and permanently disabled entitling him to full disability benefits. It is only when there is sufficient justification may the company-designated physician be allowed to avail of the exceptional 240-day extended period.**

2. **ID.; LABOR CODE; DISABILITY BENEFITS; PERMANENT TOTAL DISABILITY; THE CONCEPT OF TOTAL PERMANENT DISABILITY UNDER THE LABOR CODE AND ITS IMPLEMENTING RULES APPLIES TO SEAFARERS.—** [T]he Court has applied the 240-day under

Section 2, Rule X of the IRR to claims for disability compensation by seafarers, not because it considered seafarers as employees as defined under the SSS or the GSIS, but because of the express directive by the New Civil Code. This issue is actually not novel as it has already been previously addressed in several cases. As early as 2006 in the case of *Remigio vs. NLRC*, the Court affirmed the application of the Labor Code concept of permanent total disability to the case of seafarers. The Court stated therein that a contract of labor, such as a seafarer's contract, "is so impressed with public interest that Article 1700 of the New Civil Code expressly subjects it to 'the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.'" Considering, therefore, that the concept of total permanent disability under Article 192(c)(1) of the Labor Code is applicable to seafarers, it only follows that Section 2, Rule X of the IRR — the rule implementing the aforesaid Labor Code provision — is also applicable to seafarers.

3. ID.; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT; COMPENSATION FOR BENEFITS AND INJURY; PERMANENT AND TOTAL DISABILITY; THE FACT THAT THE SEAFARER WAS STILL UNDERGOING TREATMENT AND EVALUATION BY THE COMPANY-DESIGNATED PHYSICIAN JUSTIFIED THE ALLOWANCE OF THE EXTENSION OF THE TEMPORARY DISABILITY PERIOD TO 240 DAYS.— [T]here must be a sufficient justification to extend the initial 120-day period to the exceptional 240 days. In this regard, the Court has considered as sufficient justification the fact that the seafarer was still undergoing treatment and evaluation by the company-designated physician. Upon careful examination of the records, the Court is convinced that there existed a sufficient justification to extend the period of medical treatment and assessment of Dela Cruz by the company-designated physician. Dela Cruz was still undergoing medical treatment and evaluation by Dr. Lim after the lapse of the 120-day period. In fact, he agreed to a further medical evaluation on January 4, 2011, when he himself complained of the on-and-off pains in his scrotal area. Verily, these circumstances justified the allowance of the extension of the temporary disability period, and consequently of the period to treat and assess his medical condition, to the exceptional 240 days.

4. ID.; ID.; ID.; GUIDELINES IN ASSESSING THE SEAFARER'S DISABILITY DURING THE TERM OF HIS EMPLOYMENT.— Entitlement to disability benefits by seafarers is a matter governed, not only by medical findings but, by Philippine law and by the contract between the parties. x x x [B]y law, the material statutory provisions are Articles 191 to 193 of the Labor Code, in relation to Rule X of the IRR. By contract, the seafarers and their employers are governed, not only by their mutual agreements, but also by the provisions of the POEA-SEC which are required to be integrated in every seafarer's contract. In *Andrada vs. Agemar Manning Agency, Inc.,* the Court ruled that the issue of whether the seafarer could legally demand and claim disability benefits from his employer for an illness or injury allegedly suffered or incurred was best addressed by the provisions of the POEA-SEC. x x x Section 20(B)(3) has been interpreted to mean that it is the company-designated physician who is entrusted with the task of assessing the seafarer's disability during the term of his employment. This does not necessarily mean, however, that the said assessment is final, binding or conclusive on the seafarer, the labor tribunal or the courts. The seafarer may dispute such assessment by exercising his right to a second opinion and to consult a physician of his choice, in which case the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit. In case of disagreement between the findings of the company-designated physician and the seafarer's physician, the parties may agree to jointly refer the matter to a third doctor whose decision shall be final and binding on them. Guided by the foregoing rules and jurisprudence, the Court is convinced that Dela Cruz failed to comply with the aforementioned procedure which now justifies the dismissal of his complaint.

5. ID.; ID.; ID.; THE COMPANY-DESIGNATED DOCTOR'S CERTIFICATION MUST PREVAIL WHEN THERE IS FAILURE TO COMPLY WITH THE MANDATORY PROVISION OF REFERRAL TO A THIRD DOCTOR.— Dela Cruz refused to refer the matter to a third doctor whose assessment would have been binding to all the parties concerned. The Court has held that non-referral to a third physician, whose findings shall be considered as final and binding, constitutes a breach of the POEA-SEC. The referral to a third doctor is a

mandatory procedure which necessitates from the provision that it is the company-designated doctor whose assessment should prevail. "In other words, the company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for the referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties." For failure of Dela Cruz to comply with the mandatory procedure of referral to a third doctor under Section 20(B)(3) of the POEA-SEC, the Court has no other option but to declare that the company-designated doctor's certification must prevail. After all, jurisprudence dictates that the assessment of the company-designated physician, such as Dr. Lim's, which was arrived at after several months of treatment and medical evaluation, is more reliable than the assessment made by Dela Cruz's personal doctor, Dr. Jacinto, who examined him only once on January 7, 2011.

APPEARANCES OF COUNSEL

Ortega Bacorro Odulio Calma & Carbonell for petitioners.
R.C. Carrera Law Office for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the June 28, 2013 Decision[1] of the Court of Appeals (*CA*), in CA-G.R. SP No. 125519, as modified in its December 4, 2013 Amended Decision,[2] which set aside the April 2, 2012 Decision[3] and the

[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justice Jane Aurora C. Lantion and Associate Justice Eduardo B. Peralta, Jr., concurring; *rollo*, pp. 32-65.

[2] *Id*. at 66-68.

[3] Penned by Commissioner Dolores M. Peralta-Beley, with Commissioner Mercedes R. Posada-Lacap, concurring; *id*. at 78-85.

May 8, 2012 Resolution[4] of the National Labor Relations Commission (*NLRC*) in NLRC LAC No. (OFW-M) 01-000024-12, a complaint for permanent and total disability benefits by seafarer Dante F. Dela Cruz (*Dela Cruz*).

The Antecedents

On July 2, 2009, Tradephil Shipping Agencies, Inc. (*Tradephil*) engaged the services of Dela Cruz to work as Ordinary Seaman on board the vessel, "M/V Venus," for a period of nine (9) months with a basic monthly salary of US$377.00. Upon the expiration of the contract in April 2010, the parties signed a new one for an additional period of six (6) months, or until October 2010. For the extended period, he served as Able Seaman with a basic monthly salary of US$520.00. Sometime in July 2010, after carrying heavy loads, Dela Cruz complained of pricking pains in his left scrotal area. He reported the matter to the Master of the vessel who gave him medicines for temporary relief. Thereafter, upon the vessel's arrival in Paranagua, Brazil, he was referred to Dr. Filippo Carmosino, who diagnosed him "to be afflicted with 'Varicocele' and recommended 'light work' and 'surgery in your country.'"[5]

On September 3, 2010, Dela Cruz was repatriated to the Philippines. Upon his arrival in Manila, he was referred to the company-designated physician, Dr. Esther G. Go (*Dr. Go*) at the Metropolitan Medical Center (*MMC*). On September 6, 2010, Dr. Go diagnosed him to be suffering from "suspicious varicocele, left." On September 14, 2010, Dela Cruz was recommended for operation and was admitted to the hospital on September 22, 2010. The next day, September 23, 2010, he underwent an operation called "Varicocoelectomy, bilateral"[6] and was discharged on September 25, 2010.[7]

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[4] *Id*. at 86-88.

[5] CA *rollo*, p. 89.

[6] *Id*. at 91.

[7] *Id*. at 92.

Thereafter, Dela Cruz was entrusted to the care of the company-designated urologist, Dr. Darwin Lim (*Dr. Lim*). After a series of consultation, Dr. Lim examined him on December 29, 2010 because he still felt the on-and-off pains in his scrotal area. Dr. Lim observed that based on his condition at that time, his closest interim assessment was Grade 12 — slight residual disorder. Dela Cruz agreed to a reevaluation of his condition on January 4, 2011, the earliest date available for Dr. Lim; but for some reason, he missed this appointment with Dr. Lim.[8]

On January 6, 2011, Dela Cruz filed his complaint against Tradephil and Gregorio F. Ortega (*Ortega*), being the President of Tradephil, before the Labor Arbiter (*LA*).

On January 7, 2011, Dela Cruz sought the medical opinion of Dr. Manuel C. Jacinto (*Dr. Jacinto*), who issued a medical certificate declaring him "to be physically unfit to go back to work" with a disability rating of "total permanent."[9]

On January 17, 2011, or eleven (11) days after the filing of his complaint, Dela Cruz went back to Dr. Lim for consultation and underwent repeat inguinoscrotal ultrasound which revealed normal ultrasound of both testes. On the same date, Dr. Lim declared him fit to work. He, however, refused to sign his certificate of fitness for work because he needed to observe his condition further.[10]

On March 10, 2011, during the hearing of the case, Tradephil suggested that the parties refer the matter to a third doctor. This was rejected by Dela Cruz at the hearing on March 15, 2011.[11]

The LA Ruling

In its July 29, 2011 Decision,[12] the LA ruled that Dela Cruz was not entitled to disability benefits, explaining that because

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[8] *Id.* at 152-153.

[9] *Id.* at 115.

[10] *Id*. at 151.

[11] *Id*. at 48.

[12] Penned by Labor Arbiter Adolfo C. Babiano; *rollo*, pp. 69-77.

of the conflicting assessments of the company-designated physician and his own doctor, there should have been a referral to a third doctor, which was, however, refused by Dela Cruz. The LA continued that, with the absence of an assessment coming from an independent third doctor as required by Section 20(B) of the 2000 Philippine Overseas Employment Administration-Standard Employment Contract for Filipino Seafarers (*POEA-SEC*), the assessment of the company-designated physician, which was arrived at after a series of actual examinations and treatment, would be more credible than the assessment of Dr. Jacinto after a single consultation.

The LA also denied Dela Cruz's claims for moral and exemplary damages. The LA, nevertheless, granted his prayer for sick wages noting that the Tradephil failed to present any evidence to prove that he received his sick wages, whether partially or wholly. For the same reason, the LA granted his claim for attorney's fees in an amount equivalent to 10% of the award for sick wages. The dispositive portion of the LA decision reads:

> WHEREFORE, except as to the order for respondents to pay complainant US$2,080.00 as sick wages (US$520 x 4 mos.) and US$208.00 as attorney's fees, judgment is hereby rendered dismissing the case for lack of merit.
>
> SO ORDERED.[13]

Both parties elevated their respective appeals to the NLRC.

The NLRC Ruling

On April 2, 2012, the NLRC *affirmed with modification*, the July 29, 2011 Decision of the LA. It concurred with the LA that the assessment made by Dr. Lim, the company-designated physician, was more credible than the assessment made by Dr. Jacinto. It also dismissed his claim for permanent disability anchored on the failure of the company-designated physician to make a declaration on his fitness within 120 days from the

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[13] *Id*. at 76-77.

date of his repatriation. Citing the case of *Vergara vs. Hammonia Maritime Service, Inc.*[14] (*Vergara*), the NLRC declared that the temporary total disability period of 120 days may be extended to 240 days.

The NLRC, however, modified the LA decision with regard to the award of sick wages and attorney's fees. It noted that in its Memorandum on Appeal, Tradephil attached the vouchers, which were signed by Dela Cruz, acknowledging payment of sick wages for 120 days. The decretal portion of the NLRC decision reads:

> WHEREFORE, premises considered, judgment is rendered dismissing the appeal of complainant for lack of merit. Respondent's appeal is GRANTED.
>
> The July 29, 2011 Decision of the Labor Arbiter is hereby MODIFIED by deleting the award for sick wages and attorney's fees. The Decision finding complainant not entitled to disability benefit STAYS.
>
> SO ORDERED.[15]

Dela Cruz moved for reconsideration, but his motion was denied by the NLRC in its Resolution, dated May 8, 2012.

Aggrieved, Dela Cruz filed his petition for *certiorari* before the CA.

The CA Ruling

In its assailed Decision, dated June 28, 2013, the CA *reversed* and *set aside* the ruling of the NLRC. It asserted that the NLRC disregarded the 120-day rule under Section 20(B) of the POEA-SEC when it ruled that Dela Cruz could not claim disability benefits. The CA noted that from the time he was repatriated on September 3, 2010 until he was pronounced fit to resume sea duties on January 17, 2011, one hundred thirty six (136) days had already elapsed. Following Section 20(B) of the POEA-

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[14] 588 Phil. 895 (2008).

[15] *Rollo*, pp. 84-85.

SEC, the CA concluded that he should have been declared totally and permanently disabled as early as January 2, 2011, the 121st day from his repatriation. The CA added that *Vergara* had not been consistently applied by the Court. The *fallo* reads:

> WHEREFORE, the petition is GRANTED. Setting aside the assailed April 2, 2012 Decision and May 8, 2012 Resolution of the NLRC, the private respondents are hereby directed to pay petitioner his claimed total disability benefits of US$60,000.00 dollars and ten percent (10%) thereof as attorney's fees.
>
> SO ORDERED.[16]

Tradephil moved for reconsideration, but its motion was denied by the CA in its December 4, 2013 Amended Decision. It, however, reduced the award for disability benefits to US$5,225.00, with 10% thereof as attorney's fees. In reducing the award, it considered the interim assessment of Grade 12 disability rating made by Dr. Lim on December 29, 2010.

Hence, this petition for review raising the following:

ISSUES

I.

The Court of Appeals committed a serious error when it rendered a judgment that is not in accord with the applicable decisions of this Honorable Court.

II.

The Court of Appeals committed a grave error when it reversed the decision of the NLRC and awarded disability benefits and attorney's fees to respondent.[17]

Petitioners Tradephil and Ortega argue that the CA's departure from the ruling in *Vergara* was in clear violation of the principle of *stare decisis*, which calls for the adherence by lower courts to the doctrinal rules established by the Court.

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[16] *Id*. at 64-65.

[17] *Id*. at 16.

The petitioners further aver that respondent Dela Cruz had no cause of action when he filed his complaint on January 6, 2011. They assert that, at that time, he was neither assessed by the company-designated physician nor examined by his personal physician.

In his Comment,[18] dated April 28, 2014, respondent Dela Cruz countered that the CA correctly decided the case in his favor. He asserted that under the POEA-SEC, the company-designated physician was mandated to make an assessment of the seafarer's fitness for work within 120 days from his repatriation, failing which, he must be declared permanently disabled.

In their Reply,[19] dated April 1, 2015, the petitioners reiterated their previous arguments.

From the submissions of the parties, the Court is essentially being tasked to resolve the following issues: (i) whether the doctrine enunciated in *Vergara* applies to this case; and (ii) whether Dela Cruz is entitled to total and permanent disability benefits.

The Court's Ruling

The petition is impressed with merit.

Vergara has been consistently adhered to by the Court.

In *Vergara*, the Court clarified that the rule on the failure by the company-designated physician to make a declaration of fitness to work within the 120-day period to constitute permanent total disability should not be applied in all situations. The specific context of the application should be considered in light of the application of all rulings, laws and implementing regulations. Harmonizing the POEA-SEC provision with Article 192(c)(1), in relation to Rule X, Section 2 of the Rules and Regulations

[18] *Id*. at 134-145.

[19] *Id*. at 165-170.

Implementing Book IV of the Labor Code (*IRR*), the Court in *Vergara* held that the treatment of the company-designated physician may be extended up to a maximum of 240 days when circumstances warranted it. Thus:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days**, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.[20] [Emphasis and underscoring supplied]

Despite this holding, the CA reversed the April 2, 2012 NLRC Decision, declaring that the rule enunciated in *Vergara* was inapplicable to the present case as it had not been consistently followed by this Court. It explained that after the promulgation of *Vergara*, the Court still awarded disability compensation benefits on the basis of the 120-day rule.[21] This ratiocination is misplaced.

In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*,[22] the Court essentially ruled that the 240-day period remained an exception which should not be applied unconditionally. The

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[20] *Vergara v. Hammonia Maritime Service, Inc.*, *supra* note 14, at 912.

[21] *Quitoriano v. Jebsens Maritime, Inc.*, 624 Phil. 523 (2010); *Valenzona v. Fair Shipping Corporation*, 675 Phil. 713 (2011); *Wallem Maritime Services, Inc. v. Tanawan*, 693 Phil. 416 (2012).

[22] G.R. No. 211882, July 29, 2015, 764 SCRA 431.

Court explained that to invoke the 240-day period, the company-designated physician must provide a sufficient justification to extend the original 120-day period. Otherwise, under the law, the seafarer must be granted the relief of permanent and total disability benefits as a consequence of such non-compliance. The Court stressed that:

> Certainly, the company-designated physician must perform some significant act before he can invoke the exceptional 240-day period under the IRR. It is only fitting that the company-designated physician must provide a sufficient justification to extend the original 120-day period. Otherwise, under the law, the seafarer must be granted the relief of permanent and total disability benefits due to such non-compliance.[23]

The above rule was further refined in *Marlow Navigation Philippines, Inc. v. Osias*,[24] where the Court declared that:

> Hence, as it stands, the current rule provides: (1) that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a seafarer for sea duty is within the province of the company-designated physician, subject to the periods prescribed by law; (3) that the company-designated physician has an initial 120 days to determine the fitness or disability of the seafarer; and (4) **that the period of treatment may only be extended to 240 days if a sufficient justification exists such as when further medical treatment is required or when the seafarer is uncooperative**.[25] [Emphasis supplied]

From the foregoing, it is clear that the 120-day rule and the subsequent decisions applying it are consistent with the 240-day rule in *Vergara*. The Court had already harmonized its various rulings with respect to the periods within which a seafarer may be declared fit or unfit for sea duties for the purposes of his claim for permanent and total disability compensation. To

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[23] *Id*. at 453.

[24] G.R. No. 215471, November 23, 2015.

[25] *Id.*

emphasize, the general rule remains to be that-**the company-designated physician must declare the seafarer fit for sea duties within a period of 120 days; otherwise, the latter must be declared totally and permanently disabled entitling him to full disability benefits. It is only when there is sufficient justification may the company-designated physician be allowed to avail of the exceptional 240-day extended period.**

The 240-day rule is applicable to seafarers.

The CA opined further that Article 192(c)(1) of the Labor Code and its implementing rules, which provide for the 120-day temporary total disability period and which served as bases for the 240-day rule in *Vergara*, were not intended to apply to seafarers. In a lengthy discussion, the CA explained that Article 192(c)(1) was a provision under Book IV, Title II of the Labor Code which only applies to "employees" as defined under Republic Act (*R.A.*) No. 8282 or the Social Security Law, and R.A. No. 8291 or the GSIS Law. It reasoned in this wise:

> Pertinently, seafarers, as a general rule, are not government employees. Neither would those who are recruited by foreign-based employers (through licensed recruitment agencies) be considered as compulsorily covered by the SSS because Section 9(c) of the Social Security Law, as amended, is clear that:
>
> > "(c) Filipinos recruited by foreign-based employers for employment abroad may be covered by the SSS on a voluntary basis."
>
> Being not "compulsorily covered by the GSIS xxx" nor "by the SSS xxx," seafarers are concededly, not governed by Book Four, Title II of the Labor Code. Their disability claims are not to be processed under the "Employees Compensation and State Insurance Fund" of Book IV, Title II of the Labor Code but rather by, as admitted in the NLRC's April 2, 2012 Decision, the POEA- SEC.[26] [Emphases omitted]

This conclusion by the CA is likewise misplaced. Contrary to its opinion, the Court has applied the 240-day under Section

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[26] *Rollo*, pp. 47-48.

2, Rule X of the IRR to claims for disability compensation by seafarers, not because it considered seafarers as employees as defined under the SSS or the GSIS, but because of the express directive by the New Civil Code. This issue is actually not novel as it has already been previously addressed in several cases.

As early as 2006 in the case of *Remigio vs. NLRC*,[27] the Court affirmed the application of the Labor Code concept of permanent total disability to the case of seafarers. The Court stated therein that a contract of labor, such as a seafarer's contract, "is so impressed with public interest that Article 1700 of the New Civil Code expressly subjects it to 'the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.'"[28]

Considering, therefore, that the concept of total permanent disability under Article 192(c)(1) of the Labor Code is applicable to seafarers, it only follows that Section 2, Rule X of the IRR — the rule implementing the aforesaid Labor Code provision — is also applicable to seafarers. This was the conclusion of the Court in *Vergara* which led to the following pronouncements:

> In this respect and in the context of the present case, Article 192(c)(1) of the Labor Code provides that:
>
> xxx The following disabilities shall be deemed **total and permanent**:
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, **except as otherwise provided in the Rules**;
>
> x x x x x x x x x
>
> The rule referred to — Rule X, Section 2 of the Rules and Regulations implementing Book IV of the Labor Code — states:

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[27] 521 Phil. 330 (2006).

[28] *Id*. at 346.

> **Period of entitlement.** - (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case **benefit for temporary total disability** shall be paid. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.[29] [Underscoring and emphases in the original]

Considering that the applicability of the 240-day temporary disability under Section 2, Rule X of the IRR to seafarers is now beyond question, the only issue to be resolved is whether Dela Cruz is entitled to disability benefits.

The exceptional 240-day period is applicable in the present case.

As previously stated, there must be a sufficient justification to extend the initial 120-day period to the exceptional 240 days. In this regard, the Court has considered as sufficient justification the fact that the seafarer was still undergoing treatment and evaluation by the company-designated physician.[30]

Upon careful examination of the records, the Court is convinced that there existed a sufficient justification to extend the period of medical treatment and assessment of Dela Cruz by the company-designated physician.

Dela Cruz was still undergoing medical treatment and evaluation by Dr. Lim after the lapse of the 120-day period. In fact, he agreed to a further medical evaluation on January 4, 2011, when he himself complained of the on-and-off pains in

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[29] *Vergara v. Hammonia Maritime Service, Inc.*, *supra* note 14, at 911-912.

[30] *Magsaysay Maritime Corporation v. National Labor Relations Commission*, 711 Phil. 614 (2013).

his scrotal area. Verily, these circumstances justified the allowance of the extension of the temporary disability period, and consequently of the period to treat and assess his medical condition, to the exceptional 240 days.

Furthermore, in *C.F. Sharp Crew Management, Inc. vs. Taok*,[31] the Court ruled that a seafarer's cause of action for total and permanent disability benefits accrued when, among others, "the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there was no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;" or upon the lapse of the 240-day period without any certification being issued by the company-designated physician.[32]

In this case, instead of attending his scheduled medical reevaluation on January 4, 2011, Dela Cruz opted to file his complaint on January 6, 2011, or 125 days after his repatriation. At that time, he had no cause of action yet because there was sufficient reason for the extension of the treatment and assessment period to 240 days; and that the 240-period had yet to lapse. In any case, Dr. Lim subsequently issued a certification of his fitness to work on January 17, 2011, or 136 days after the latter's repatriation — well within the extended 240-day period. His complaint was, therefore, prematurely filed.

No valid challenge to the company-designated physician's medical assessment.

Entitlement to disability benefits by seafarers is a matter governed, not only by medical findings but, by Philippine law and by the contract between the parties.[33] As already stated, by

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[31] 691 Phil. 521 (2012).

[32] *Id*. at 538.

[33] *OSG Shipmanagement Manila, Inc. v. Pellazar*, G.R. No. 198367, August 6, 2014, 735 SCRA 280.

law, the material statutory provisions are Articles 191 to 193 of the Labor Code, in relation to Rule X of the IRR. By contract, the seafarers and their employers are governed, not only by their mutual agreements, but also by the provisions of the POEA-SEC which are required to be integrated in every seafarer's contract.[34]

In *Andrada vs. Agemar Manning Agency, Inc.*,[35] the Court ruled that the issue of whether the seafarer could legally demand and claim disability benefits from his employer for an illness or injury allegedly suffered or incurred was best addressed by the provisions of the POEA-SEC. Section 20(B)(3) thereof provides:

> Section 20 [B]. *Compensation and Benefits for Injury or Illness*.
>
> x x x x x x x x x
>
> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of his permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.
>
> For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.
>
> **If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.** [Emphasis supplied]

Section 20(B)(3) has been interpreted to mean that it is the company- designated physician who is entrusted with the task

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[34] *The Late Alberto B. Javier v. Philippine Transmarine Carriers, Inc.*, 738 Phil. 374 (2014).

[35] 698 Phil. 170 (2012).

of assessing the seafarer's disability during the term of his employment. This does not necessarily mean, however, that the said assessment is final, binding or conclusive on the seafarer, the labor tribunal or the courts. The seafarer may dispute such assessment by exercising his right to a second opinion and to consult a physician of his choice, in which case the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit.[36] In case of disagreement between the findings of the company-designated physician and the seafarer's physician, the parties may agree to jointly refer the matter to a third doctor whose decision shall be final and binding on them.[37]

Guided by the foregoing rules and jurisprudence, the Court is convinced that Dela Cruz failed to comply with the aforementioned procedure which now justifies the dismissal of his complaint. In the first place, an irregularity is readily apparent in this case. Aside from the premature filing of his complaint, it is beyond dispute that he consulted with his physician of choice before the company-designated physician could issue a certification of fitness to work. This is in clear breach of Section 20(B)(3) which essentially provides that resort to a second opinion must be done after the assessment by the company-designated physician precisely to dispute the said assessment.

While the seafarer has the right to seek a second opinion, the final determination of whose assessment must prevail should be done in accordance with the agreed procedure stated in Section 20(B)(3).

Further, for reasons known only to him, Dela Cruz refused to refer the matter to a third doctor whose assessment would have been binding to all the parties concerned. The Court has held that non-referral to a third physician, whose findings shall be considered as final and binding, constitutes a breach of the

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[36] *Coastal Safeway Marine Services, Inc. v. Esguerra*, 671 Phil. 56 (2011).

[37] *Andrada v. Agemar Manning Agency, Inc.*, *supra* note 35, at 182.

POEA-SEC. The referral to a third doctor is a mandatory procedure which necessitates from the provision that it is the company-designated doctor whose assessment should prevail. "In other words, the company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for the referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties."[38]

For failure of Dela Cruz to comply with the mandatory procedure of referral to a third doctor under Section 20(B)(3) of the POEA-SEC, the Court has no other option but to declare that the company-designated doctor's certification must prevail. After all, jurisprudence dictates that the assessment of the company-designated physician, such as Dr. Lim's, which was arrived at after several months of treatment and medical evaluation, is more reliable than the assessment made by Dela Cruz's personal doctor, Dr. Jacinto, who examined him only once on January 7, 2011.

WHEREFORE, the petition is **GRANTED**. The assailed June 28, 2013 Decision and the December 4, 2013 Amended Decision of the Court of Appeals in CA-G.R. SP No. 125519 are **REVERSED** and **SET ASIDE**. The April 2, 2012 Decision and the May 8, 2012 Resolution of the National Labor Relations Commission in NLRC LAC No. (OFW-M) 01-000024-12 are **REINSTATED**.

SO ORDERED.

Carpio (Chairperson), Peralta, Leonen, and *Jardeleza, JJ.*, concur.

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[38] *INC Shipmanagement, Inc. v. Rosales*, G.R. No. 195832, October 1, 2014, 737 SCRA 438, 450, 451.

SECOND DIVISION

[G.R. Nos. 215705-07. February, 22, 2017]

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS, *petitioners, vs.* **PHILIPPINE AIRLINES, INC.,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED; EXCISE TAXES; THE RESPONDENT'S IMPORTATIONS OF ALCOHOL AND TOBACCO PRODUCTS FOR ITS COMMISSARY SUPPLIES ARE NOT SUBJECT TO EXCISE TAX, FOR ITS TAX PRIVILEGE IN SECTION 13 OF PRESIDENTIAL DECREE NO. 1590 HAS NOT BEEN REVOKED.— [A]s in previous cases resolving the same question and involving substantially similar factual backgrounds, the ruling will not change. In the fairly recent case of *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*, the core issue raised was whether or not PAL's importations of alcohol and tobacco products for its commissary supplies are subject to excise tax. This Court, ruling in favor of PAL, held that: It is a basic principle of statutory construction that a later law, general in terms and not expressly repealing or amending a prior special law, will not ordinarily affect the special provisions of such earlier statute. So it must be here. Indeed, as things stand, PD 1590 has not been revoked by the NIRC of 1997, as amended. Or to be more precise, the tax privilege of PAL provided in Sec. 13 of PD 1590 has not been revoked by Sec. 131 of the NIRC of 1997, as amended by Sec. 6 of RA 9334. x x x In the more recent consolidated cases of *Republic of the Philippines v. Philippine Airlines, Inc. (PAL)* and *Commissioner of Internal Revenue v. Philippine Airlines, Inc. (PAL)*, this Court, echoing the ruling in the abovecited case of *CIR v. PAL*, held that: In other words, the franchise of PAL remains the governing law on its exemption from taxes. Its payment of either basic corporate income tax or franchise tax — whichever is lower — shall be in lieu of all other taxes, duties, royalties, registrations, licenses, and other fees and

charges, except only real property tax. x x x On July 1, 2005, Republic Act No. 9337 (*RA 9337*) took effect thereby further amending certain provisions of the NIRC. x x x Thus, this Court held in the abovecited PAL consolidated cases: However, upon the amendment of the 1997 NIRC, Section 22 of R.A. 9337 abolished the franchise tax and subjected PAL and similar entities to corporate income tax and value-added tax (VAT). PAL nevertheless remains exempt from taxes, duties, royalties, registrations, licenses, and other fees and charges, provided it pays corporate income tax as granted in its franchise agreement. Accordingly, PAL is left with no other option but to pay its basic corporate income tax, the payment of which shall be in lieu of all other taxes, except VAT, and subject to certain conditions provided in its charter. It bears to note that the repealing clause of RA 9337 enumerated the laws or provisions of laws which it repeals. However, there is nothing in the repealing clause, nor in any other provisions of the said law, which makes specific mention of PD 1590 as one of the acts intended to be repealed.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL DETERMINATIONS OF THE COURT OF TAX APPEALS ARE GENERALLY BINDING ON THE SUPREME COURT.— [P]etitioners in the present petition again raise the issue regarding PAL's alleged failure to comply with the conditions set by Section 13 of PD 1590 for its imported tobacco and alcohol products to be exempt from excise tax. These conditions are: (1) such supplies are imported for the use of the franchisee in its transport/non-transport operations and other incidental activities; and (2) they are not locally available in reasonable quantity, quality and price. However, as this Court has previously held, the matter as to PAL's supposed noncompliance with the conditions set by Section 13 of P.D. 1590 for its imported supplies to be exempt from excise tax, are factual determinations that are best left to the CTA, which found that PAL had, in fact, complied with the above conditions. The CTA is a highly specialized body that reviews tax cases and conducts trial *de novo*. Thus, without any showing that the findings of the CTA are unsupported by substantial evidence, its findings are binding on this Court.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioners.
PAL Legal Affairs Department for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* seeking the reversal and setting aside of the Decision[1] and Resolution[2] of the Court of Tax Appeals (*CTA*) *En Banc*, dated April 30, 2014 and December 16, 2014, respectively, in CTA EB Nos. 1029, 1031 and 1032. The assailed judgment affirmed the January 17, 2013 Decision[3] and June 4, 2013 Resolution[4] of the CTA Special 2nd Division in CTA Case No. 8153.

The controversy in the instant case, which gave rise to the present petition for review on *certiorari*, revolves around the interpretation of the provisions of Presidential Decree No. 1590 (*PD 1590*), otherwise known as "An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air Transport Services in the Philippines and Other Countries" *vis-a-vis* Republic Act No. 9334 (*RA 9334*), otherwise known as "An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose

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[1] Penned by Associate Justice Erlinda P. Uy with the concurrence of Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas, Annex "A" to Petition; *rollo*, Vol. I, pp. 155-174. Presiding Justice, Roman G. Del Rosario wrote a Dissenting Opinion; *rollo*, Vol. I, pp. 175-189.

[2] Annex "B" to Petition, *id*. at 43-45. This time, Presiding Justice Del Rosario concurred with the majority opinion.

[3] Penned by Associate Justice Juanito C. Castañeda, Jr., with the concurrence of Associate Justices Caesar A. Casanova and Cielito N. Mindaro-Grulla, Annex "I" to Petition; *rollo*, Vol. I, pp. 484-508.

[4] Annex "K" to Petition; *rollo,* Vol. II, pp. 607-615.

Sections 131, 141, 142, 145, and 228 of the National Internal Revenue Code of 1997." PD 1590 was enacted on June 11, 1978, while RA 9334 took effect on January 1, 2005.

Prior to the effectivity of RA 9334, Republic Act No. 8424 (*RA 8424*), otherwise known as the "Tax Reform Act of 1997," was enacted and took effect on January 1, 1998, thereby amending the National Internal Revenue Code (NIRC). Section 131 of the NIRC, as amended by RA 8424, provides:

SEC. 131. *Payment of Excise Taxes on Imported Articles.* –

(A) *Persons Liable.* —Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into the Philippines by persons, entitles, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entitles, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits and wines into the Philippines, even if destined for tax and duty free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon: ***Provided, however,*** **That this shall not apply to cigars and cigarettes, distilled spirits and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, crated under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and are not transshipped to any other port in the Philippines:** ***Provided, further*****, That importations of cigars and cigarettes, distilled spirits and wines by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable taxes, duties, charges, including excise tax due thereon:** *Provided, still further,* That if

such articles directly imported by a government-owned and operated duty-free shop like the Duty-Free Philippines, shall be labeled *"tax and duty-free"* and *"not for resale"*: *Provided, still further,* That is such articles brought into the duly chartered or legislated freeports under Republic Acts No. 7227, 7922 and 7903 are subsequently introduced into the Philippine customs territory, then such articles shall, upon such introduction, be deemed imported into the Philippines and shall be subject to all imposts and excise taxes provided herein and other statutes: *Provided, finally*, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory.

Articles confiscated shall be disposed of in accordance with the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner of Customs and Internal Revenue, upon consultation with the Secretary of Tourism and the General manager of the Philippine Tourism Authority.

The tax due on any such goods, products, machinery, equipment or other similar articles shall constitute a lien on the article itself, and such lien shall be superior to all other charges or liens, irrespective of the possessor thereof.

(B) *Rate and Basis of the Excise Tax on Imported Articles.*- Unless otherwise specified imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles.[5]

On January 1, 2005, RA 9334 took effect, Section 6 of which amended the abovequoted Section 131 of the NIRC and, accordingly, reads as follows:

SEC. 131. *Payment of Excise Taxes on Imported Articles.* –

(A) *Persons Liable.* - Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

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[5] Emphasis supplied.

"In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

"The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: ***Provided, further,*** **That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only:** *Provided, still further,* That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': *Provided, finally,* That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory."

"Cigars and cigarettes, distilled spirits and wines within the premises of all duty-free shops which are not labelled as hereinabove required, as well as tax and duty-free articles obtained from a duty-free shop and subsequently found in a non-duty-free shop to be offered for resale shall be confiscated, and the perpetrator of such non-labelling or re-selling shall be punishable under the applicable provisions of this Code.

"Articles confiscated shall be disposed of in accordance with the rules and regulations to be promulgated by the Secretary of Finance,

upon recommendation of the Commissioners of Customs and Internal Revenue, upon consultation with the Secretary of Tourism and the General Manager of the Philippine Tourism Authority.

"The tax due on any such goods, products, machinery, equipment or other similar articles shall constitute a lien on the article itself, and such lien shall be superior to all other charges or liens, irrespective of the possessor thereof.

"(B) *Rate and Basis of the Excise Tax on Imported Articles.* - Unless otherwise specified, imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles."[6]

The amendment increased the rates of excise tax imposed on alcohol and tobacco products. It also removed the exemption from taxes, duties and charges, including excise taxes, on importations of cigars, cigarettes, distilled spirits, wines and fermented liquor into the Philippines.

Thereafter, PAL's importations of alcohol and tobacco products which were intended for use in its commissary supplies during international flights, were subjected to excise taxes. For the said imported articles, which arrived in Manila between October 3, 2007 and December 22, 2007, PAL was assessed excise taxes amounting to a total of ₱6,329,735.21.

On September 5, 2008, PAL paid under protest. On March 5, 2009, PAL filed an administrative claim for refund of the above excise taxes it paid with the Bureau of Internal Revenue (*BIR*) contending that it is entitled to tax privileges under Section 13 of PD 1590, which provides as follows:

Section 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:

(a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance

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[6] Emphasis supplied.

with the provisions of the National Internal Revenue Code; or

(b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:

1. All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement; provided, that all such purchases by, sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and nontransport operations and other activities incidental thereto;

2. All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price;

> 3. All taxes on lease rentals, interest, fees, and other charges payable to lessors, whether foreign or domestic, of aircraft, engines, equipment, machinery, spare parts, and other property rented, leased, or chartered by the grantee where the payment of such taxes is assumed by the grantee;
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> 4. All taxes on interest, fees, and other charges on foreign loans obtained and other obligations incurred by the grantee where the payment of such taxes is assumed by the grantee;
>
> 5. All taxes, fees, and other charges on the registration, licensing, acquisition, and transfer of aircraft, equipment, motor vehicles, and all other personal and real property of the grantee; and
>
> 6. The corporate development tax under Presidential Decree No. 1158-A.

The grantee, shall, however, pay the tax on its real property in conformity with existing law.

For purposes of computing the basic corporate income tax as provided herein, the grantee is authorized:

(a) To depreciate its assets to the extent of not more than twice as fast the normal rate of depreciation; and

(b) To carry over as a deduction from taxable income any net loss incurred in any year up to five years following the year of such loss.[7]

Considering that the two-year prescriptive period for filing a judicial claim for refund was about to expire and the BIR was yet to act on its claims, PAL filed a judicial claim for refund, via a petition for review, with the CTA on September 2, 2010. The case, docketed as CTA Case No. 8153, was raffled-off to the Second Division of the tax court.

Respondent CIR filed his Answer, while respondent COC was declared in default for failure to file his Answer and Pre-Trial Brief. Thereafter, trial ensued.

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[7] Emphasis supplied.

On January 17, 2013, the CTA Second Division issued a Decision[8] partially granting PAL's claim for refund. The dispositive portion of the said Decision reads:

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondents are hereby **ORDERED to REFUND** to petitioner the amount of ₱2,094,985.21, representing petitioner's erroneously-paid excise tax on September 5, 2008.

SO ORDERED.[9]

The CTA Second Division found that PAL was able to sufficiently prove its exemption from the payment of excise taxes pertaining to its importation of alcoholic products and since it already paid the disputed excise taxes on the subject importation, it is entitled to refund. However, the tax court ruled that, with respect to its subject importation of tobacco products, PAL failed to discharge its burden of proving that the said product were not locally available in reasonable quantity, quality or price, in accordance with the requirements of the law. Thus, it is not entitled to refund for the excise taxes paid on such importation.

The herein parties filed separate motions for reconsideration, but these were all denied by the CTA Second Division in its Resolution dated June 4, 2013.

Consequently, the parties appealed to the CTA *En Banc* via separate petitions for review, docketed as CTA EB Nos. 1029, 1031 and 1032, which were later consolidated.

On April 30, 2014, the CTA *En Banc* rendered a Decision dismissing the consolidated petitions and affirming *in toto* the assailed Decision of the CTA Second Division.

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[8] Penned by Associate Justice Juanito C. Castañeda, Jr., with the concurrence of Associate Justices Caesar A. Casanova and Cielito N. Mindaro-Grulla.

[9] *Rollo*, pp. 507-508. (Emphasis in the original)

The parties filed their respective motions for reconsideration, but the CTA *En Banc* denied them in its Resolution dated December 16, 2014.

Hence, the instant petition for review on *certiorari* raising a sole issue, to wit:

> Whether PAL's alcohol and tobacco importations for its commissary supplies are subject to excise tax.[10]

In the present petition, petitioner argues that:

> I.
>
> Section 131 of the NIRC revoked PAL's tax privilege under Section 13 of P.D No. 1590 with respect to excise tax on its alcohol and tobacco importation.
>
> II
>
> Assuming that it is still entitled to the tax privilege, PAL failed to adequately prove that the conditions under Section 13 of P.D. No. 1590 were met in this case.[11]

The main question raised in the instant case is whether the tax privilege of PAL provided in Section 13 of PD 1590 has been revoked by Section 131 of the NIRC of 1997, as amended by Section 6 of RA 9334.

The Court rules in the negative.

This issue is not novel. Thus, as in previous cases resolving the same question and involving substantially similar factual backgrounds, the ruling will not change.

In the fairly recent case of *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*,[12] the core issue raised was whether or not PAL's importations of alcohol and tobacco products for its commissary supplies

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[10] *Id.* at 119.

[11] *Id.* at 119-120.

[12] G.R. Nos. 212536-37, August 27, 2014, 733 SCRA 741.

are subject to excise tax. This Court, ruling in favor of PAL, held that:

> It is a basic principle of statutory construction that a later law, general in terms and not expressly repealing or amending a prior special law, will not ordinarily affect the special provisions of such earlier statute. So it must be here.
>
> Indeed, as things stand, PD 1590 has not been revoked by the NIRC of 1997, as amended. Or to be more precise, the tax privilege of PAL provided in Sec. 13 of PD 1590 has not been revoked by Sec. 131 of the NIRC of 1997, as amended by Sec. 6 of RA 9334. We said as much in *Commissioner of Internal Revenue v. Philippine Air Lines, Inc [G.R. No. 180066, July 7, 2009, 609 Phil. 695]*:
>
> > That the Legislature chose not to amend or repeal [PD] 1590 even after PAL was privatized reveals the intent of the Legislature to let PAL continue to enjoy, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter. x x x
>
> To be sure, the manner to effectively repeal or at least modify any specific provision of PAL's franchise under PD 1590, as decreed in the aforequoted Sec. 24, has not been demonstrated. And as aptly held by the CTA en banc, borrowing from the same *Commissioner of Internal Revenue* case:
>
> > While it is true that Sec. 6 of RA 9334 as previously quoted states that "the provisions of any special or general law to the contrary notwithstanding," such phrase left alone cannot be considered as an express repeal of the exemptions granted under PAL's franchise because it fails to specifically identify PD 1590 as one of the acts intended to be repealed. x x x
> >
> > Noteworthy is the fact that PD 1590 is a special law, which governs the franchise of PAL. Between the provisions under PD 1590 as against the provisions under the NIRC of 1997, as amended by 9334, which is a general law, the former necessary prevails. This is in accordance with the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted only to supply deficiencies in the former. In addition, where there are two statutes, the earlier special and the later general – the terms of the general broad enough to include the matter provided for in the special – the fact that

> one is special and other general creates a presumption that the special is considered as remaining an exception tothe general, one as a general law of the land and the other as the law of a particular case.

Any lingering doubt, however, as to the continued entitlement of PAL under Sec. 13 of its franchise to excise tax exemption on otherwise taxable items contemplated therein, e.g., aviation gas, wine, liquor or cigarettes, should once and for all be put to rest by the fairly recent pronouncement in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*. In that case, the Court, on the premise that the "propriety of a tax refund is hinged on the kind of exemption which forms its basis,'' declared in no uncertain terms that PAL has "sufficiently prove[d]" its entitlement to a tax refund of the excise taxes and that PAL's payment of either the franchise tax or basic corporate income tax in the amount fixed thereat shall be in lieu of all other taxes or duties, and inclusive of all taxes on all importations of commissary and catering supplies, subject to the condition of their availability and eventual use. x x x[13]

In the more recent consolidated cases of *Republic of the Philippines v. Philippine Airlines, Inc. (PAL)*[14] and *Commissioner of Internal Revenue v. Philippine Airlines, Inc. (PAL)*,[15] this Court, echoing the ruling in the abovecited case of *CIR v. PAL*, held that:

In other words, the franchise of PAL remains the governing law on its exemption from taxes. Its payment of either basic corporate income tax or franchise tax — whichever is lower — shall be in lieu of all other taxes, duties, royalties, registrations, licenses, and other fees and charges, except only real property tax. The phrase "in lieu of all other taxes" includes but is not limited to taxes, duties, charges, royalties, or fees due on all importations by the grantee of the commissary and catering supplies, provided that such articles or supplies or materials are imported for the use of the grantee in its transport and nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price.[16]

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[13] *CIR, et al. v. PAL, supra*, at 749-751.

[14] G.R. Nos. 209353-54, July 6, 2015, 761 SCRA 620.

[15] G.R. Nos. 211733-34, July 6, 2015, 761 SCRA 620.

[16] *Commissioner of Internal Revenue, et al. v. PAL, supra* note 12, at 630.

On July 1, 2005, Republic Act No. 9337 (*RA 9337*) took effect thereby further amending certain provisions of the NIRC. Section 22 of RA 9337 specifically provides as follows:

> **SEC. 22.** *Franchises of Domestic Airlines.* — **The provisions of P.D. No. 1590 on the franchise tax of Philippine Airlines, Inc.**, R.A. No. 7151 on the franchise tax of Cebu Air, Inc., R.A. No. 7583 on the franchise tax of Aboitiz Air Transport Corporation, R.A. No. 7909 on the franchise tax of Pacific Airways Corporation, R.A. No. 8339 on the franchise tax of Air Philippines, or any other franchise agreement or law pertaining to a domestic airline to the contrary notwithstanding:
>
> **(A) The franchise tax is abolished;**
>
> **(B) The franchisee shall be liable to the corporate income tax;**
>
> (C) The franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property; and
>
> **(D) The franchisee shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement.**[17]

Thus, this Court held in the abovecited PAL consolidated cases:

> However, upon the amendment of the 1997 NIRC, Section 22 of R.A. 9337 abolished the franchise tax and subjected PAL and similar entities to corporate income tax and value-added tax (VAT). PAL nevertheless remains exempt from taxes, duties, royalties, registrations, licenses, and other fees and charges, provided it pays corporate income tax as granted in its franchise agreement. Accordingly, PAL is left with no other option but to pay its basic corporate income tax, the payment of which shall be in lieu of all other taxes, except VAT, and subject to certain conditions provided in its charter.[18]

It bears to note that the repealing clause of RA 9337 enumerated the laws or provisions of laws which it repeals.

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[17] Emphasis supplied.

[18] *Id.* at 630-631.

However, there is nothing in the repealing clause, nor in any other provisions of the said law, which makes specific mention of PD 1590 as one of the acts intended to be repealed.

Lastly, as in the abovecited cases, petitioners in the present petition again raise the issue regarding PAL's alleged failure to comply with the conditions set by Section 13 of PD 1590 for its imported tobacco and alcohol products to be exempt from excise tax. These conditions are: (1) such supplies are imported for the use of the franchisee in its transport/non-transport operations and other incidental activities; and (2) they are not locally available in reasonable quantity, quality and price.[19] However, as this Court has previously held, the matter as to PAL's supposed noncompliance with the conditions set by Section 13 of P.D. 1590 for its imported supplies to be exempt from excise tax, are factual determinations that are best left to the CTA, which found that PAL had, in fact, complied with the above conditions.[20] The CTA is a highly specialized body that reviews tax cases and conducts trial *de novo*. Thus, without any showing that the findings of the CTA are unsupported by substantial evidence, its findings are binding on this Court.[21]

WHEREFORE, the instant petition for review on certiorari is **DENIED**. The assailed Decision and Resolution of the Court of Tax Appeals En Banc, dated April 30, 2014 and December 16, 2014, respectively, in CTA EB Nos. 1029, 1031 and 1032 are **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Mendoza,* and *Leonen, JJ.,* concur.

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[19] *Commissioner of Internal Revenue, et al. v. Philippine Airlines, Inc., supra* note 12.

[20] *Id.*; *Republic v. Philippine Airlines, Inc./Commissioner of Customs v. Philippine Airlines, Inc., supra* notes 14 and 15.

[21] *Id.*

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated March 5, 2015.

FIRST DIVISION

[G.R. No. 217979. February 22, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ADALTON ARCE *y* CAMARGO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF MARIJUANA; ELEMENTS.— In every prosecution for the illegal sale of marijuana, the following elements must be proved: (1) the identity of the buyer and the seller; (2) the object and the consideration; and (3) the delivery of the thing sold and the payment therefor.

2. ID.; ID.; ILLEGAL POSSESSION OF MARIJUANA; ELEMENTS.— [I]n a prosecution for the illegal possession of marijuana, the following elements must be proved: (1) that the accused was in possession of the object identified as a prohibited or regulated drug; (2) that the drug possession was not authorized by law; and (3) that the accused freely and consciously possessed the drug.

3. ID.; ID.; ILLEGAL SALE AND POSSESSION OF MARIJUANA; IN THE PROSECUTION FOR BOTH OFFENSES, IT MUST BE ESTABLISHED THAT THE SUBSTANCE SAID TO HAVE BEEN ILLEGALLY SOLD OR POSSESSED WAS THE VERY SUBSTANCE OFFERED IN COURT AS EXHIBIT.— [For illegal sale and possession of marijuana,] it is crucial that the prosecution establishes the identity of the seized dangerous drugs in a way that their integrity is well preserved — from the time of seizure or confiscation from the accused until the time of presentation as evidence in court. The fact that the substance said to have been illegally sold or possessed was the very same substance offered in court as exhibit must be established.

4. ID.; ID.; CUSTODY OF SEIZED ITEMS; THE COMPLIANCE WITH THE RULE ON THE PRESERVATION OF THE INTEGRITY OF THE CONFISCATED ITEMS IS DULY ESTABLISHED IN CASE AT BAR.— The records also reveal

that there was compliance with the rule on the preservation of the integrity of the confiscated items allegedly sold and possessed by accused-appellant. PO1 Maquinta testified that he had placed the markings on the confiscated items; had made an inventory; and had taken pictures of these items right after the arrests and in the presence of the representatives of the media, the DOJ, PDEA, and a *barangay* official. On the same day, he forwarded these items, along with the letter-request signed by Police Chief Inspector (PCI) Errol Texon Garchitorena, Jr., to PCI Josephine Suico Llena, forensic chemist of the crime laboratory. The items were received and examined by the latter who kept them in the crime laboratory until the test result, together with the items, was submitted to the court.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT IMPAIRED WHEN THE INCONSISTENCIES IN THE TESTIMONIES OF WITNESSES REFER ONLY TO MINOR OR COLLATERAL MATTERS.— [W]e reiterate what we have held regarding inconsistencies in the testimonies of witnesses. When inconsistencies refer only to minor details and collateral matters, they do not affect the substance or the veracity of the declarations, or the weight of the testimonies. Nor do they impair the credibility of the witnesses, especially where there is consistency in the latter's narration of the principal occurrence and positive identification of the culprit.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

SERENO, *C.J.*:

We resolve the appeal[1] from the Decision[2] issued by the Twentieth Division of the Court of Appeals (CA), Cebu City,

[1] *Rollo*, pp. 24-26.

[2] *Id.* at 4-23; dated 21 November 2014; penned by CA Associate Justice

in CA-G.R. CR-H.C. No. 01583, which affirmed in toto the Joint Judgment[3] issued by the Regional Trial Court (RTC) of Dumaguete City, Branch 30, in Criminal Case Nos. 2010-20075 and 2010-20076. The Joint Judgment found accused-appellant guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (R.A.) 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

THE FACTS

Accused-appellant Adalton Arce *y* Camargo was charged in two separate Informations,[4] *viz.*:

Criminal Case No. 2010-20075

That on or about the 5th day of August 2010, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused not being then authorized by law, did then and there willfully, unlawfully, and feloniously sell to a poseur buyer one (1) matchbox of dried marijuana leaves, stalks and seeds containing a net weight of 4.24 grams, a dangerous drug.

Contrary to Sec. 5, Art. II of R.A. 9165.

Criminal Case No. 2010-20076

That on or about the 5th of August 2010, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused not being then authorized by law, did then and there willfully, unlawfully, and feloniously possess seven (7) matchboxes of dried marijuana, leaves, stalks and seeds containing a total weight of 29.36 grams, a dangerous drug.

That the accused has been found positive for the use of methamphetamine, a dangerous drug, as reflected in Chemistry Report No. CDT-057-10.

Marie Christine Azcarraga-Jacob and concurred in by Associate Justices Ramon Paul L. Hernando and Ma. Luisa C. Quijano-Padilla.

[3] Records, pp. 140-152; dated 28 December 2012; penned by former RTC Judge Rafael Crescencio C. Tan, Jr.

[4] *Id*. at 3-6 (dated 6 August 2010) in Criminal Case No. 2010-20075; 41-42 (dated 6 August 2010) and 35-36 (dated 18 August 2010, as amended) in Criminal Case No. 2010-20076.

Contrary to Sec. 11, Art. II of R.A. 9165.

When arraigned, accused-appellant pleaded not guilty to both charges.[5]

THE VERSION OF THE PROSECUTION

The facts according to the prosecution were summarized by the CA as follows:

> The facts as established by the prosecution show that around 10:00 o'clock in the morning of 5 August 2010, SPO2 Dario Paquera received a phone call that a certain Adalton Arce, appellant herein, was engaged in the illegal sale of marijuana under the "Daang Taytayan" (old bridge) at Purok Mansanitas, Canday-ong, Dumaguete City. Acting on the tip-off, SPO2 Paquera called PO1 Roderick Maquinta, PO2 John Mark Buquiran, and other policemen to a short briefing for the conduct of a buy-bust operation. During the briefing, PO1 Maquinta was tasked to act as the poseur-buyer, while PO2 Buquiran was to assist PO1 Maquinta in arresting the suspect. SPO2 Paquera then gave PO1 Maquinta a one (1) hundred peso bill to buy marijuana from the suspect. After the briefing, PO1 Maquinta, PO2 Buquiran, and other police officers, together with the members of the Barangay Intelligence Network, proceeded to Daang Taytayan at Purok Mansanitas, Canday-ong. Upon reaching the target area at around 4:00 o'clock in the afternoon, the police officers immediately spotted appellant Arce at Daang Taytayan. PO1 Maquinta and PO2 Buquiran then went down the bridge to approach appellant. As PO1 Maquinta and PO2 Buquiran got closer, appellant met them and asked if they wanted to buy marijuana. PO1 Maquinta answered "Yes." Appellant then asked how much they were going to buy, to which PO1 Maquinta replied, "One hundred pesos."
>
> Upon receiving the ₱100 bill marked money, appellant took one (1) matchbox and gave it to PO1 Maquinta. After verifying that the contents of the matchbox were dried marijuana leaves, stalks, and seeds, PO1 Maquinta held appellant's hands, introduced himself as a police officer, and placed appellant under arrest. Appellant resisted, resulting to a scuffle between him and PO1 Maquinta. With PO2 Buquiran's help, PO1 Maquinta eventually restrained appellant.

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[5] *Id*. at 80.

After placing appellant under arrest, PO1 Maquinta conducted a body search, and found seven (7) more matchboxes containing marijuana. PO1 Maquinta also recovered the ₱100 marked bill and money of different denominations totaling to an amount of ₱435.00. PO1 Maquinta then marked the first matchbox, the subject of the buy-bust operation, with "ACA-BB 08/05/10", while the seven other matchboxes recovered from the body search, with "ACA-P1 08/05/10" to "ACA-P7 08/05/10". As PO2 Jonathan Abucayon was making inventory of all the confiscated items in the presence of representatives of the media, the Department of Justice [DOJ], the Philippine Drug Enforcement Agency [PDEA], and an elected barangay official, PO1 Maquinta took several photographs of the evidence.

PO2 Abucayon later prepared a Certificate of Inventory which was signed by PO1 Maquinta and PO2 Buquiran, together with media representative Reysan Elloran, DOJ representative Chilius Benlot, PDEA Special Investigator 2 Ivy Claire Oledan, and Barangay Kagawad Ronnie Pasunting. Afterwards, appellant was brought to the Dumaguete City Police Station for investigation. At the police station, PO1 Maquinta prepared a Memorandum Request for Laboratory Examination and Drug Test on appellant, signed by Police Chief Inspector Errol Texon Garchitorena, Jr. Appellant was later brought to Philippine National Police (PNP) Crime Laboratory in Dumaguete City, together with the seized specimens, for laboratory examination. The recovered evidence brought by PO1 Maquinta was personally received by Forensic Chemist Police Inspector (PCI) Josephine Suico Llena. Urine samples were also collected from appellant.

At the crime laboratory, Forensic Chemist PCI Llena re-marked the matchbox marked "ACA-BB 08/05/10" as specimen "A", while other matchboxes respectively marked "ACA-P1 08/05/10" to "ACA-P7 08/05/10" were re-marked as specimens "B" to "H". The laboratory examination report showed that the seized leaves, stalks, and seeds yielded positive for marijuana, a dangerous drug. Appellant was further found positive for the use of methamphetamine hydrochloride or shabu, also a dangerous [drug].[6]

THE VERSION OF THE DEFENSE

Meanwhile, the defense interposed the following facts:

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[6] *Rollo*, pp. 6-8.

In defense, appellant denied having sold and possessed marijuana. He denied having used shabu. According to appellant, he was sitting and drinking at the dike of Daang Taytayan at Purok Mansanitas at around 3:00 o'clock in the afternoon of 05 August 2010, when PO1 Maquinta and an "asset" arrested him and, without any provocation, started beating him. Done with the maltreatment, these two persons brought him to the upper portion of the dike, where a neighbor Damang Poblacion who was handcuffed was sitting down along with SPO2 Paquera. Five (5) minutes later, the policemen brought out several matchboxes containing marijuana. Afterwards, he was subjected to a body search, and his money amounting to more than ₱400 was confiscated. He was then brought to the police station, along with Damang Poblacion. He later learned that Damang Poblacion was released for reasons unknown to him.[7]

THE RULING OF THE RTC

The trial court found the accused guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of R.A. 9165. The dispositive portion of the Joint Judgment reads:

WHEREFORE, in the light of the foregoing, the Court hereby renders judgment as follows:

1. In Criminal Case No. 20075, the accused Adalton Arce y Camargo is hereby found GUILTY beyond reasonable doubt of the offense of illegal sale of 4.24 grams of *shabu* in violation of Section 5, Article II of RA 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

The one (1) Fuego matchbox with markings "ACA-BB 08/05/10" containing 4.24 grams of marijuana is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

2. In Criminal Case No. 20076, the accused Adalton Arce y Camargo is hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of 29.36 grams of marijuana in violation of Section 11, Article II of R.A. No. 9165 and is hereby sentenced to suffer a penalty of twelve (12) years and one (1) day as minimum

[7] *Id*. at 8.

term to fourteen (14) years as maximum term and to pay a fine of Four Hundred Thousand Pesos (₱400,000.00).

The seven (7) Fuego matchboxes with markings "ACA-P1 08/05/10" to "ACA-P7 08-05-10," respectively and containing a total net weight of 29.36 grams of marijuana are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with the law.

In the service of sentence, the accused Adalton Arce y Camargo shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.[8]

THE RULING OF THE CA

Accused-appellant filed an appeal before the CA alleging that the trial court erred (1) in giving credence to the incredible and inconsistent testimonies of the prosecution witnesses; and (2) in convicting him of the crimes charged despite the failure of the prosecution to prove his guilt beyond reasonable doubt.[9]

The CA, however, affirmed the ruling of the lower court in this wise:

WHEREFORE, all premises considered, the Joint Judgment dated 28 December 2012 of the Regional Trial Court, Branch 30, Dumaguete City, in Criminal Case Nos. 2010-20075 and 2010-20076, finding appellant Adalton Arce y Camargo guilty of violation of Sections 5 and 11, Article II of R.A. No. 9165, is hereby **AFFIRMED** *in toto*.

SO ORDERED.[10]

Hence, this appeal in which accused-appellant reiterates the issues he raised before the CA. Specifically, he raises the following arguments: (1) the testimonies of the prosecution witnesses were at odds on who made the inventory and when

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[8] Records, p. 151.

[9] CA *rollo*, p. 14.

[10] *Rollo*, p. 22.

the marking was made; (2) the prosecution failed to rebut the testimony of accused-appellant that he had known Police Officer (PO)1 Maquinta even before the incident; (3) the photographs did not show that the matchboxes seized from accused-appellant contained marijuana; (4) the testimony of PO1 Maquinta presented a conflicting chronology of events in that (a) he initially claimed making the inventory and marking the items after the arrest, but subsequently said that he had bodily searched accused-appellant after the arrest; and (b) PO1 Maquinta initially said that accused-appellant had been "immediately" arrested, but the former later on claimed to have examined the contents of the seven matchboxes before the arrest; and (5) the testimonies of the prosecution witnesses did not indicate whether the representatives of the media, the Department of Justice (DOJ), and the Philippine Drug Enforcement Agency (PDEA), as well as a *barangay* official, had arrived with the buy-bust team.[11]

THIS COURT'S RULING

We dismiss the appeal and sustain the conviction of accused-appellant.

In every prosecution for the illegal sale of marijuana, the following elements must be proved: (1) the identity of the buyer and the seller; (2) the object and the consideration; and (3) the delivery of the thing sold and the payment therefor.[12]

On the other hand, in a prosecution for the illegal possession of marijuana, the following elements must be proved: (1) that the accused was in possession of the object identified as a prohibited or regulated drug; (2) that the drug possession was not authorized by law; and (3) that the accused freely and consciously possessed the drug.[13]

For both offenses, it is crucial that the prosecution establishes the identity of the seized dangerous drugs in a way that their

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[11] *Id.* at 10-11.

[12] *People v. Soriano*, 549 Phil. 250, 256 (2007).

[13] *People v. Del Norte*, G.R. No. 149462, 29 March 2004, 426 SCRA 383.

integrity is well preserved – from the time of seizure or confiscation from the accused until the time of presentation as evidence in court.[14] The fact that the substance said to have been illegally sold or possessed was the very same substance offered in court as exhibit must be established.[15]

A careful scrutiny of the evidence presented by the prosecution convincingly establishes beyond reasonable doubt the guilt of accused-appellant and the law enforcers' compliance with the rule on the preservation of the integrity of the seized dangerous drugs.

The poseur-buyer, PO1 Maquinta, testified that the sale of marijuana took place, that accused-appellant was the seller, and that the latter was also illegally in possession of marijuana upon being apprehended.[16]

The records also reveal that there was compliance with the rule on the preservation of the integrity of the confiscated items allegedly sold and possessed by accused-appellant. PO1 Maquinta testified that he had placed the markings on the confiscated items; had made an inventory;[17] and had taken pictures of these items right after the arrests and in the presence of the representatives of the media, the DOJ, PDEA, and a *barangay* official.[18] On the same day, he forwarded these items, along with the letter-request[19] signed by Police Chief Inspector (PCI) Errol Texon Garchitorena, Jr., to PCI Josephine Suico Llena, forensic chemist of the crime laboratory.[20] The items were received and examined by the latter who kept them in the crime

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[14] *Reyes v. CA*, 686 Phil. 137 (2012).

[15] *Mallillin v. People*, 576 Phil. 576 (2008).

[16] TSN, 18 October 2012, pp. 4-21.

[17] Records, p. 16.

[18] TSN, 18 October 2012, p. 12.

[19] Records, p. 18.

[20] TSN, 18 October 2012, p. 17.

laboratory until the test result,[21] together with the items, was submitted to the court.[22]

Accused-appellant nonetheless points to inconsistencies in the testimonies of the prosecution witnesses. First, he cites the conflicting testimonies of PO1 Maquinta and PO1 Buquiran, which pertain to who made the inventory of the confiscated items. Then he refers to PO1 Maquinta's two inconsistent statements. Initially, the latter allegedly said he had made the inventory and marking after the arrest, but subsequently claimed to have bodily searched accused-appellant after the arrest. Accused-appellant also points out that PO1 Maquinta at first claimed to have "immediately" arrested the former, but later claimed to have examined the contents of the seven matchboxes before the arrest. Finally, accused-appellant argues that the photographs do not show whether the matchboxes indeed contained marijuana.

Still, we reiterate what we have held regarding inconsistencies in the testimonies of witnesses. When inconsistencies refer only to minor details and collateral matters, they do not affect the substance or the veracity of the declarations, or the weight of the testimonies.[23] Nor do they impair the credibility of the witnesses, especially where there is consistency in the latter's narration of the principal occurrence and positive identification of the culprit.[24]

In the instant case, when accused-appellant was arrested for selling one matchbox of marijuana, PO1 Maquinta marked the item "ACA-BB/08/05/10." Upon arrest, accused-appellant was also found to be in possession of 7 more matchboxes of marijuana. For illegal possession of the illegal drug, he was again arrested

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[21] Chemistry Report No. D-093-10 dated 6 August 2010 (Records, p. 21) along with specimens B (5.18 grams), C (4.34 grams), D (3.58 grams), E (4.61 grams), F (5.01 grams), G (3.29 grams), and H (3.35 grams).

[22] TSN, 18 October 2012, p. 26.

[23] *People v. Fang*, G.R. No. 199874, 23 July 2014.

[24] *People v. Mamaruncas,* G.R. No. 179497, 25 January 2012.

by PO1 Maquinta. The latter also immediately marked the seized items "ACA-P1 08/05/10" to "ACA-P7 08/05/10." After marking them, PO1 Maquinta made an inventory and took photographs[25] of the items in the presence of the accused and the representatives of the media, the DOJ, and PDEA, as well as a *barangay* official. The Certificate of Inventory[26] was thereafter signed by PO1 Maquinta, along with PO1 Buquiran and the witnesses.

Accused-appellant further casts doubt on the presence of the four identified witnesses at the time of the inventory and marking. But this attempt is untenable in light of his admission during the supposed presentation of the following prosecution witnesses: DOJ employee Anthony Chilius Benlot, media practitioner Reysan Elloren, *Kagawad* Ronnie Pasunting of Barangay Calindagan in Dumaguete City, and PDEA Special Investigator Ivy Claire Oledan.[27] Both the prosecution and the defense stipulated that these individuals were present during the inventory of the seized items as reflected in the RTC Order[28] dated 25 October 2012.[29]

Finally, we note a typographical error in the RTC ruling as timely pointed out by plaintiff-appellee through the Office of the Solicitor General.[30] The trial court incorrectly found accused-appellant guilty beyond reasonable doubt of the illegal sale of 4.24 grams of *shabu*, instead of marijuana, in Criminal Case No. 2010-20075.

WHEREFORE, premises considered, the appeal is hereby **DENIED**. The assailed Decision dated 21 November 2014 issued by the Twentieth Division of the Court of Appeals Cebu City in CA-G.R. CR-H.C. No. 01583 is **AFFIRMED** with a minor

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[25] Records, p. 24.

[26] *Id.* at 16.

[27] *Id.* at 131-132.

[28] *Id.*

[29] *Id.*

[30] CA *rollo,* p. 71.

modification: accused-appellant in Criminal Case No. 2010-20075 is held **GUILTY** beyond reasonable doubt of the offense of illegal sale of 4.24 grams of marijuana.

SO ORDERED.

Leonardo-de Castro, del Castillo, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

SECOND DIVISION

[G.R. No. 221296. February 22, 2017]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **NICASIO A. CONTI,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; THE ESSENCE OF DUE PROCESS, AS APPLIED TO ADMINISTRATIVE PROCEEDINGS, IS AN OPPORTUNITY TO EXPLAIN ONE'S SIDE, OR AN OPPORTUNITY TO SEEK A RECONSIDERATION OF THE ACTION OR RULING COMPLAINED OF; CASE AT BAR.— Procedural due process is that which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. It contemplates notice and opportunity to be heard before judgment is rendered affecting one's person or property. In administrative proceedings, due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend oneself. In such proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. In *Ang Tibay v. Court of Industrial Relations,* the Court stated that

one of the requisites for due process compliance was that the decision must be rendered on the basis of the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected. The essence of due process, therefore, as applied to administrative proceedings, is an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Thus, a violation of that right occurs when a court or tribunal rules against a party without giving the person the opportunity to be heard. In this case, Conti was never given an opportunity to air his side. He was not furnished with a copy of the Ombudsman order requiring him to file a counter-affidavit. This was admitted by the Ombudsman as the records bore that the notices were sent to the PCGG when he was no longer a Commissioner and to Conti's previous address in Araneta Avenue, Quezon City, which were returned unserved with a notation that the addressee moved and left with no forwarding address. This suffices as proof that Conti was not properly apprised of the cases against him.

2. REMEDIAL LAW; ACTIONS; JUDGMENTS; A DECISION RENDERED IN DISREGARD OF THE FUNDAMENTAL RIGHT OF DUE PROCESS IS VOID FOR LACK OF JURISDICTION.— The doctrine consistently adhered to by this Court is that a decision rendered without due process is void *ab initio* and may be attacked directly or collaterally. A decision is void for lack of due process if, as a result, a party is deprived of the opportunity to be heard. "The cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted of their jurisdiction. Thus, the violation of the States right to due process raises a serious jurisdiction issue which cannot be glossed over or disregarded at will. Where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction. Any judgment or decision rendered notwithstanding such violation may be regarded as a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever it exhibits its head." Consequently, such nullity not only applies to the entire judgment rendered by the Ombudsman but likewise nullifies the judgment rendered by the CA reversing the findings of the Ombudsman as to Conti's liability. With the violation of Conti's right to due process, it is therefore plain, that any judgment arising from it is void, whether the same be favorable to him or otherwise.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Quial Beltran & Yu for respondent.

D E C I S I O N

MENDOZA, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by the Office of the Ombudsman *(Ombudsman)* seeks to review and set aside the May 19, 2015 Decision[2] and the October 28, 2015 Resolution[3] of the Court of Appeals (*CA*), in CA-G.R. SP No. 126698, entitled *Nicasio A. Conti v. Office of the Ombudsman*. The CA issuances reversed the August 26, 2011 Decision and the May 25, 2012 Order of the Ombudsman, finding respondent Nicasio A. Conti *(Conti)* guilty of Dishonesty, Misconduct and Conduct Prejudicial to the Best Interest of the Service.

The Antecedents

This case stemmed from the filing of a complaint by the Field Investigation Office *(FIO)* of the Ombudsman against Chairman Camilo L. Sabio and Commissioners Narciso S. Nario, Teresito L. Javier, Ricardo M. Abcede, and Conti of the Presidential Commission on Good Government *(PCGG)*, for Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.

The complaint alleged that Resolution No. 2007-010,[4] which was issued and signed by the abovementioned PCGG

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[1] *Rollo*, pp. 9-23.

[2] *Id*. at 27-43. Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Magdangal M. De Leon, and Nina G. Antonio-Valenzuela, concurring.

[3] *Id*. at 44-45.

[4] RESOLUTION NO. 2007-010

Commissioners, resolved to lease five new vehicles from a leasing company and gave way to two lease agreements in 2007 and 2009 between PCGG and the United Coconut Planter's Bank (*UCPB*). FIO asserted that the said resolution was in violation of existing laws and administrative issuances which required the availability of appropriation of funds and the conduct of public bidding as prerequisites for the validity of a government contract.[5]

On April 5, 2010, the Ombudsman ordered the PCGG Commissioners to file their respective counter-affidavits. All but Conti complied with the directive. Subsequently, two (2) criminal Informations against all of them were filed before the Sandiganbayan for violation of Section 3(e) of Republic Act *(R.A.)* No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.[6]

WHEREAS, due to wear and tear, the existing official vehicles of the Commission have become prone to mechanical problems that regular repairs thereto unnecessarily drain the meager funds of the Commission;

WHEREAS, under the circumstances, it is for the best economic interest of the Commission to acquire new vehicles in order to effectively discharge its functions;

WHEREAS, due to fiscal constraints, the Commission can only afford to lease five (5) vehicles to meet the transportation needs of the Chairman and the commissioners;

WHEREAS, funds are available to cover the lease for five (5) vehicles;

NOW, THEREFORE, BE IT RESOLVED, as it is hereby RESOLVED, that five (5) new vehicles be leased from a reputable leasing company, the make and model thereof, subject to the individual preference and approval of the Chairman and the Commissioners;

RESOLVED, FURTHER, that COMMISSIONER TERESO L. JAVIER, is authorized, as he is hereby AUTHORIZED, to negotiate and sign and all contracts or agreements pertaining to the lease of the vehicles above-mentioned.

RESOLVED, FINALLY, that the Finance and Administration Department, in consultation with Commissioner Javier is hereby DIRECTED to take necessary steps for the immediate implementation of this Resolution.

[5] *Rollo*, pp. 28-30.

[6] *Id*. at 31-32.

On August 26, 2011, the Ombudsman found all five (5) PCGG Commissioners administratively liable for Dishonesty, Misconduct and Conduct Prejudicial to the Best Interest of the Service. Thus:

> WHEREFORE, this Office finds respondents CAMILO L. SABIO, RICARDO M. ABCEDE, TERESIO L. JAVIER, NARCISO S. NARIO and NICASIO CONTI guilty of **DISHONESTY, MISCONDUCT, AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE**. Had they remained in the service, they would have been meted the penalty of **SUSPENSION** for **six (6) months and one (1) day** pursuant to Section 52 (B) (2) and (A) (20), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service. They are ordered to pay a FINE equivalent to their **salary for six (6) months,** to be deducted from their retirement benefits.
>
> **SO ORDERED**.[7]

The Motion for Reconsideration of Conti

On April 2, 2012, Conti moved for reconsideration of the Ombudsman decision. Claiming that he was denied due process, he sought the reversal of the findings of the Ombudsman. He averred that he only learned of the filing of the cases before the Sandiganbayan for the first time through news reports; that he searched online and found a report on the website of ABS-CBN; that he was shocked and surprised by the filing of the cases because he was never informed and he never received any *subpoena* from the Ombudsman; that on February 16, 2012, he secured a photocopy of the records of the criminal cases from the Sandiganbayan where it appeared that his copy of the decision was sent to "30 Bituan St., North Araneta Avenue, Quezon City" on February 1, 2012 as shown in the registry receipt; that the said address used to be his address and he had since moved to #1 F. Sevilla St., Sevilla Townhomes, Barangay Pedro Cruz, San Juan City, in 2006; that he could not have received any notice even if it was sent to the PCGG office because he was already separated from the service as of August 2008; and lastly, that he never received any notice, *subpoena* or order

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[7] *Id.* at 27-28.

from the Ombudsman during the conduct of the administrative and criminal investigation.[8]

On May 25, 2012, the Ombudsman denied Conti's motion for reconsideration.[9]

Aggrieved, Conti filed a petition for review before the CA.

The Ruling of the CA

In its May 19, 2015 Decision, the CA *granted* Conti's petition. It found that Conti was indeed deprived of due process as he did not receive a copy of the Ombudsman's order requiring him to file a counter-affidavit; that such denial of due process was not cured by the filing of his motion for reconsideration as it was filed precisely to raise the issue of the violation of his right to due process; that he was not even furnished copies of the affidavits and other pieces of evidence considered by the Ombudsman; and that, hence, he was deprived of a fair opportunity to squarely and intelligently answer the accusations hurled against him.[10]

In the same decision, the CA ruled that Conti could not be held administratively liable for dishonesty, misconduct, and conduct prejudicial to the best interest of the service. It noted that nothing in Resolution No. 2007-010 would show that Conti intended to defraud, lie or make a false statement; that the decision to avail of new vehicles through lease was justified by the unavailability of funds; that the FIO did not present countervailing evidence to prove that Conti, in so acting, was predisposed to lie, cheat, deceive, or defraud; and that under the prevailing circumstances, the burden to prove by substantial evidence that Conti had the intent to commit a wrong was not satisfied. As far as misconduct was concerned, the CA opined that Conti's reliance on the long standing practice in the PCGG to lease vehicles militated against any wrongful intention to

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[8] *Id.* at 32-33.

[9] *Id*. at 33.

[10] *Id*. at 35-37.

transgress any rule as it displayed good faith on his part. There being good faith, no misconduct could be attributed to him. Finally, the CA concluded that he did not commit acts prejudicial to the best interest of the service as it was not shown that false statements were made in the resolution or that there was any misappropriation of public funds.[11] Thus:

> **WHEREFORE**, premises considered, the instant *Petition for Review* is **GRANTED**. The Decision dated 26 August 2011 and Order dated 25 May 2012 both rendered by the Office of the Ombudsman in OMB-C-A-10-0123-B, *insofar as Petitioner Nicasio A. Conti is concerned*, are **REVERSED** and **SET ASIDE**. Accordingly, the administrative complaint for Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service filed by the Field Investigation Office-Office of the Ombudsman against *Petitioner Nicasio A. Conti* is **DISMISSED**.
>
> **SO ORDERED**.[12]

On October 28, 2015, the CA denied the Ombudsman's motion for reconsideration.

Hence, this petition.

ISSUES

I. THE HONORABLE COURT OF APPEALS (12TH Division) GRIEVOUSLY ERRED IN RULING THAT RESPONDENT NICASIO A. CONTI WAS DENIED DUE PROCESS IN OMB-C-A-10-0123-B.

II. THE HONORABLE COURT OF APPEALS (12th Division) GRIEVOUSLY ERRED IN FINDING THAT RESPONDENT NICASIO A. CONTI IS NOT LIABLE FOR DISHONESTY, GRAVE MISCONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.[13]

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[11] *Id*. at 40-42.

[12] *Id*. at 42-43.

[13] *Id*. at 15-16.

The Ombudsman, through the Office of the Solicitor General (*OSG*), argues that Conti was not denied his right to due process and as he was served notices at the addresses that he stated in his employment records at the PCGG and provided by the latter to the Ombudsman. The Ombudsman would not have known of his address other than what could be found in the employment records. The fact of Conti's receipt of a copy of the complete case records from the Ombudsman, although belatedly, showed no deprivation of due process.

The OSG cites the case of *Ruivivar v. Office of the Ombudsman*[14] *(Ruivivar)* where it was held that there was no denial of due process when a party received copies of the affidavits, which were never controverted. It stresses that the Ombudsman considered Conti's motion for reconsideration where the latter controverted the allegations against him and even presented evidence to support his position; and that it re-evaluated the evidence and reviewed the records of the case for months before issuing the order affirming his administrative liability. The OSG points out that no grave error of facts, laws or serious irregularities tainted the Ombudsman decision.[15]

In addition, the OSG assigns as an error the CA opinion that because no particular rule of action covered the lease agreement for vehicles, Conti could not be held administratively liable for dishonesty, grave misconduct and conduct prejudicial to the best interest of the service. The OSG invites the attention of the Court to COA Circular No.85-55-A,[16] dated September 8,

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[14] 587 Phil. 100 (2008).

[15] *Rollo*, pp. 16-17.

[16] 4.0 REVISED RULES AND REGULATIONS ON CERTAIN TRANSACTIONS

4.3 LEASE PURCHASE

The national government may enter into an agreement for the lease purchase of equipment subject to public bidding, the approval of the Office of the Budget and Management, and to other pertinent accounting and auditing regulations. Details of the payment shall be indicated in the lease purchase agreement and accompanied with a certification of availability of equipment outlay authorized for the agency to cover the full contract cast. The lease

1985, which requires public bidding in the lease-purchase of equipment including service vehicles. Thus, the PCGG should have conducted a public bidding first before entering into a lease-purchase agreement as the wording of the above circular cannot be mistaken.[17]

The OSG further states that the decision of Conti and the rest of the members of the Commission to enter into the questioned vehicle lease contracts without public bidding cannot be justified by what they called the long standing practice"[18] of the PCGG as this would sanction a violation of R.A. No. 9184, otherwise known as the Government Procurement Reform Act. It also cited COA Circular No. 85-55-A,[19] Article XVI of Art. IV of R.A. No. 9184[20] and Sec. 54.2 (b) of its Implementing

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purchase agreement may be entered into only for specialized equipment such as typewriters, adding machines and automobiles, the purchase price of which is at least ₱50,000.00. All lease purchase agreements of equipment the total value of which exceeds ₱200,000 shall be subject to the approval of the President.

[17] *Rollo*, pp. 18-19.

[18] *Id.* at 21.

[19] COA Circular provides:

b. Emergency Purchase

Unless otherwise provided by law or the charter, agencies are authorized to make emergency purchase of supplies, materials, and spare parts to meet an emergency which may involve the loss or danger to life and/or property, or are to be used in connection with a project or activity which cannot be delayed causing detriment to the public service.

An emergency purchase, canvass of prices of items from at least three (3) bonafide reputable suppliers shall be required, except when the amount involved is less than ₱1000.00 or in case of repeat orders where the price is the same or less than the original price.

A supplier may be deemed a bonafide and reputable if it satisfies the following criteria:

a. it should be duly licensed and registered with appropriate bodies;
b. it is not "blacklisted" by any government agency at the time of canvass; and
c. it should be in the business for at least six (6) months.

[20] R.A. No. 9184 provides:

Sec. 48. Alternative Methods. – Subject to the prior approval of the

Rules and Regulations (*IRR*)[21] to show that even that "long standing practice" negates the defense of urgency.

As Resolution No. 2007-010 providing for the lease of vehicles to the PCGG in 2007 made no mention of any urgency to meet a need, the OSG argues that the defense of urgent necessity to lease the vehicles to restore vital public services was belatedly thought of only after the case had been filed. It stresses that

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Head of the Procuring Entity or his duly authorized representative and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of procurement:

x x x x x x x x x

(2) Negotiated Procurement. – a method of Procurement that may be resorted under extraordinary circumstances provided for in Section 53 of this Act and other instances that shall be specified in the IRR, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant.

In all instances, the Procuring Entity shall ensure that the most advantageous price for the government is obtained.

Sec. 53. Negotiated Procurement. – Negotiated Procurement shall be allowed only in the following instances:

x x x x x x x x x

(b) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or restore vital public services, infrastructure facilities and other public utilities.

[21] Sec. 18, 54.2 In addition to the specific terms, conditions, limitations and restrictions on the application of each of the alternative methods specified in Section 48 to 53 of this IRR-A, the following shall apply:

x x x x x x x x x

(b) For items (a) and (b) of Section 53, in the case of goods and infrastructure project entity shall draw up a list of three (3) suppliers or contractors which will be invited to submit bids. The procedures for the conduct of public bidding shall be observed, and the lowest calculated and responsive bid shall be considered for award. Moreover, the provisions of Section 21.2.4 of this IRR-A shall be observed.

the practice of the PCGG Commissioners and their predecessors of resorting to lease-purchase agreement failed to observe COA Circular No. 85-55-A, R.A. No. 9184 and its IRR, all of which intended to prevent the pernicious practice of giving undue favor or advantage to a contracting party to the detriment and prejudice of the government, and, thus, a transgression of some definite rule of action was clear. It adds that "[m]ore than a prejudice amounting to any monetary loss, the loss of faith in government service is a greater prejudice which this Honorable Court should guard against."[22]

Respondent Conti insists that he was deprived of his right to due process as there was nothing on record that showed he was even notified of the proceedings before the Ombudsman until it rendered a decision on the case. He emphasizes that "due process of law contemplates notice and opportunity to be heard before judgment is rendered."[23] Conti also pleads that this Court consider the fact that, even in his motion for reconsideration, he never had the fair opportunity to squarely and intelligently answer nor refute the accusations against him and present any evidence in support of his defense as he was not furnished with, or had otherwise received affidavits, whether before or after the decision was rendered. According to him, all he had at the time he filed his motion for reconsideration was a copy of the Ombudsman decision and the two informations in the said case.

Ruling of the Court

Conti was deprived of his Constitutional Right to Due Process

Section 1, Article III of the 1987 Constitution guarantees that:

> No person shall be deprived of life, liberty, or property without due process of law nor shall any person be denied the equal protection of the law.

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[22] *Rollo*, pp. 21-22.

[23] *Id.* at 50-51.

Procedural due process is that which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. It contemplates notice and opportunity to be heard before judgment is rendered affecting one's person or property.[24]

In administrative proceedings, due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend oneself. In such proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. In *Ang Tibay v. Court of Industrial Relations*,[25] the Court stated that one of the requisites for due process compliance was that the decision must be rendered on the basis of the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.

The essence of due process, therefore, as applied to administrative proceedings, is an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Thus, a violation of that right occurs when a court or tribunal rules against a party without giving the person the opportunity to be heard.[26]

In this case, Conti was never given an opportunity to air his side. He was not furnished with a copy of the Ombudsman order requiring him to file a counter-affidavit. This was admitted by the Ombudsman as the records bore that the notices were sent to the PCGG when he was no longer a Commissioner and to Conti's previous address in Araneta Avenue, Quezon City, which were returned unserved with a notation that the addressee moved and left with no forwarding address. This suffices as proof that Conti was not properly apprised of the cases against him.

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[24] *Luzon Surety Co., Inc. v. Jesus Panaguiton*, 173 Phil. 355, 360 (1978).

[25] 69 Phil. 635 (1940).

[26] *Estrada v. Office of the Ombudsman*, G.R. Nos. 212140-41, January 21, 2015,748 SCRA 1, 57, citing *Ruivivar v. Ombudsman*, 587 Phil. 100 (2008).

The Court disagrees with the Ombudsman in citing the case of *Ruivivar* as Conti's situation was not similar to the cited case. In *Ruivivar*, the petitioner filed her motion for reconsideration and the Ombudsman acted on it, albeit belatedly, by issuing an Order that she be furnished with all the pleadings and other pertinent documents and allowing her to file, within ten (10) days from receipt, such pleading which she deemed fit under the circumstances. In the said case, however, the petitioner still failed to refute the charges against her.

Effect of such a Violation

The doctrine consistently adhered to by this Court is that a decision rendered without due process is void *ab initio* and may be attacked directly or collaterally. A decision is void for lack of due process if, as a result, a party is deprived of the opportunity to be heard.[27] "The cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted of their jurisdiction. Thus, the violation of the States right to due process raises a serious jurisdiction issue which cannot be glossed over or disregarded at will. Where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction. Any judgment or decision rendered notwithstanding such violation may be regarded as a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever it exhibits its head."[28]

Consequently, such nullity not only applies to the entire judgment rendered by the Ombudsman but likewise nullifies the judgment rendered by the CA reversing the findings of the Ombudsman as to Conti's liability. With the violation of Conti's right to due process, it is therefore plain, that any judgment arising from it is void, whether the same be favorable to him or otherwise.

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[27] *Uy v. Court of Appeals*, 400 Phil. 25, 36 (2000).

[28] *People v. Duca*, 618 Phil. 154, 166 (2009), citing *Saldana v. Court of Appeals*, 268 Phil. 424, 431-432 (1990).

In sum, the CA was correct in decreeing that Conti was deprived of his constitutional right to due process. At that point, it should have ordered the remand of the case to the Ombudsman for appropriate action. The CA, however, also resolved the issues on the substantive merits of the case. It was an error because Conti was only questioning the violation of his right to due process. Although he also discussed the merits of the case, it was more of a precautionary action on his part. The CA should have been more prudent to refrain from rendering judgment and instead remand the case to the Ombudsman to provide Conti the opportunity that he was deprived of by officially furnishing him with the complete records of the case and allowing him to file the appropriate pleadings in his defense.

WHEREFORE, the petition is **PARTLY GRANTED**. The May 19, 2015 Decision and the October 28, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 126698 are reversed insofar as they touched on the merits of the case.

The case is **REMANDED** to the Ombudsman for appropriate action.

SO ORDERED.

Carpio (Chairperson), Peralta, Perlas-Bernabe,[*] and *Leonen, JJ.,* concur.

SECOND DIVISION

[G.R. No. 221590. February 22, 2017]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **ASALUS CORPORATION,** *respondent.*

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[*] Per Special Order No. 2416-P dated January 4, 2017.

SYLLABUS

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE; ASSESSMENT AND COLLECTION OF TAXES; PRESCRIPTIVE PERIOD OF ASSESSMENT; INTERNAL REVENUE TAXES SHALL BE ASSESSED WITHIN THREE YEARS; EXCEPTIONS.—** Generally, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, or where the return is filed beyond the period, from the day the return was actually filed. Section 222 of the NIRC, however, provides for exceptions to the general rule. It states that in the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the assessment may be made within ten (10) years from the discovery of the falsity, fraud or omission. x x x [A] mere showing that the returns filed by the taxpayer were false, notwithstanding the absence of intent to defraud, is sufficient to warrant the application of the ten (10) year prescriptive period under Section 222 of the NIRC.

2. **ID.; ID.; ID.; ID.; ID.; FALSE RETURN; THERE IS A PRESUMPTION THAT A TAXPAYER HAS FILED A FALSE RETURN WHEN THERE IS A SHOWING THAT IT HAS SUBSTANTIALLY UNDERDECLARED ITS SALES, RECEIPTS OR INCOME AND ITS FAILURE TO OVERCOME THE PRESUMPTION WARRANTS THE APPLICATION OF THE TEN-YEAR PRESCRIPTIVE PERIOD FOR ASSESSMENT.—** Under Section 248(B) of the NIRC, there is a *prima facie* evidence of a false return if there is a substantial underdeclaration of taxable sales, receipt or income. The failure to report sales, receipts or income in an amount exceeding 30% of what is declared in the returns constitute substantial underdeclaration. A *prima facie* evidence is one which that will establish a fact or sustain a judgment unless contradictory evidence is produced. In other words, when there is a showing that a taxpayer has substantially underdeclared its sales, receipt or income, there is a presumption that it has filed a false return. As such, the CIR need not immediately present evidence to support the falsity of the return, unless the taxpayer fails to overcome the presumption against it. Applied in this case, the audit investigation revealed that there were undeclared VATable sales more than 30% of that declared in

Asalus' VAT returns. x x x [T]he CIR need not present further evidence as the presumption of falsity of the returns was not overcome. Asalus was bound to refute the presumption of the falsity of the return and to prove that it had filed accurate returns. Its failure to overcome the same warranted the application of the ten (10)-year prescriptive period for assessment under Section 222 of the NIRC. To require the CIR to present additional evidence in spite of the presumption provided in Section 248(B) of the NIRC would render the said provision inutile.

3. ID.; ID.; ID.; PROTESTING AN ASSESSMENT; NOTICE REQUIREMENT; SUBSTANTIAL COMPLIANCE THEREWITH IS SUFFICIENT, FOR WHAT IS IMPORTANT IS THAT THE TAXPAYER HAS BEEN SUFFICIENTLY INFORMED OF THE FACTUAL AND LEGAL BASES OF THE ASSESSMENT SO THAT IT MAY FILE AN EFFECTIVE PROTEST AGAINST THE ASSESSMENT.— It is true that neither the FAN nor the FDDA explicitly stated that the applicable prescriptive period was the ten (10)-year period set in Section 222 of the NIRC. They, however, made reference to the PAN, which categorically stated that "[t]he running of the three-year statute of limitation as provided under Section 203 of the 1997 National Internal Revenue Code (NIRC) is not applicable xxx but rather to the ten (10) year prescriptive period pursuant to Section 222(A) of the tax code x x x." In *Samar-I Electric Cooperative v. COMELEC*, the Court ruled that it sufficed that the taxpayer was substantially informed of the legal and factual bases of the assessment enabling him to file an effective protest x x x. Thus, substantial compliance with the requirement as laid down under Section 228 of the NIRC suffices, for what is important is that the taxpayer has been sufficiently informed of the factual and legal bases of the assessment so that it may file an effective protest against the assessment. In the case at bench, Asalus was sufficiently informed that with respect to its tax liability, the extraordinary period laid down in Section 222 of the NIRC would apply. This was categorically stated in the PAN and all subsequent communications from the CIR made reference to the PAN. Asalus was eventually able to file a protest addressing the issue on prescription, although it was done only in its supplemental protest to the FAN.

4. LEGAL ETHICS; ATTORNEYS; SHOULD BE MORE CIRCUMSPECT IN THEIR CHOICE OF WORDS TO ARGUE THEIR CLIENT'S POSITION.— A lawyer is indeed expected to champion the cause of his client with utmost zeal and competence. Such exuberance, however, must be tempered to meet the standards of civility and decorum. Rule 8.01 of the Code of Professional Responsibility mandates that "[a] lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper." In *Noble v. Atty. Ailes*, the Court cautioned lawyers to be careful in their choice of words as not to unduly malign the other party x x x. While the Court recognizes and appreciates the passion of Asalus' counsels in promoting and protecting its interest, they must still be reminded that they should be more circumspect in their choice of words to argue their client's position. As much as possible, words which undermine the integrity, competence and ability of the opposing party, or are otherwise offensive, must be avoided especially if the message may be delivered in a respectful, yet equally emphatic manner. A counsel's mettle will not be viewed any less should he choose to pursue his cause without denigrating the other party.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Gallrado Songco & Associates for respondent.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari* seeks to reverse and set aside the July 30, 2015 Decision[1] and the November 6, 2015

[1] Penned by Associate Justice Caesar A. Casanova with Associate Justice Juanito C. Castañeda Jr., Associate Justice Lovell R. Bautista, Associate Justice Erlinda P. Uy, Associate Justice Esperanza R. Fabon-Victorino, Associate Justice Cielito N. Mindaro-Grulla, Associate Justice Amelia R. Cotangco-Manalastas and Associate Justice Ma. Belen M. Ringpis-Liban concurring, and Presiding Justice Roman G. del Rosario dissenting; *rollo*, pp.14-27.

Resolution[2] of the Court of Tax Appeals *(CTA) En Banc* in CTA EB No. 1191, which affirmed the April 2, 2014 Decision[3] of the CTA Third Division *(CTA Division)*.

The Antecedents

On December 16, 2010, respondent Asalus Corporation *(Asalus)* received a Notice of Informal Conference from Revenue District Office *(RDO)* No. 47 of the Bureau of Internal Revenue *(BIR)*. It was in connection with the investigation conducted by Revenue Officer Fidel M. Bañares II *(Bañares)* on the Value-Added Tax *(VAT)* transactions of Asalus for the taxable year 2007.[4] Asalus filed its Letter-Reply,[5] dated December 29, 2010, questioning the basis of Bañares' computation for its VAT liability.

On January 10, 2011, petitioner Commissioner of Internal Revenue *(CIR)* issued the Preliminary Assessment Notice *(PAN)* finding Asalus liable for deficiency VAT for 2007 in the aggregate amount of ₱413, 378, 058.11, inclusive of surcharge and interest. Asalus filed its protest against the PAN but it was denied by the CIR.[6]

On August 26, 2011, Asalus received the Formal Assessment Notice *(FAN)* stating that it was liable for deficiency VAT for 2007 in the total amount of ₱95,681,988.64, inclusive of surcharge and interest. Consequently, it filed its protest against the FAN, dated September 6, 2011. Thereafter, Asalus filed a supplemental protest stating that the deficiency VAT assessment had prescribed pursuant to Section 203 of the National Internal Revenue Code *(NIRC)*.[7]

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[2] *Id*. at 35-38.

[3] Penned by Associate Justice Esperanza R. Fabon-Victorino with Associate Justice Ma. Belen M. Ringpis-Liban concurring and Associate Justice Lovell R. Bautista on leave; *id*. at 197-211.

[4] *Id*. at 43.

[5] *Id*. at 136.

[6] *Id*. at 43-44.

[7] *Id.* at 44.

On October 16, 2012, Asalus received the Final Decision on Disputed Assessment[8] *(FDDA)* showing VAT deficiency for 2007 in the aggregate amount of ₱106,761,025.17, inclusive of surcharge and interest and ₱25,000.00 as compromise penalty. As a result, it filed a petition for review before the CTA Division.

The CTA Division Ruling

In its April 2, 2014 Decision, the CTA Division ruled that the VAT assessment issued on August 26, 2011 had prescribed and consequently deemed invalid. It opined that the ten (10)-year prescriptive period under Section 222 of the NIRC was inapplicable as neither the FAN nor the FDDA indicated that Asalus had filed a false VAT return warranting the application of the ten (10)-year prescriptive period. It explained that it was only in the PAN where an allegation of false or fraudulent return was made. The CTA stressed that after Asalus had protested the PAN, the CIR never mentioned in both the FAN and the FDDA that the prescriptive period would be ten (10) years. It further pointed out that the CIR failed to present evidence regarding its allegation of fraud or falsity in the returns.

The CTA wrote that "the three instances where the three-year prescriptive period will not apply must always be alleged and established by clear and convincing evidence and should not be anchored on mere conjectures and speculations,[9] before the ten (10) year prescriptive period could be considered. Thus, it disposed:

> WHEREFORE, the instant Petition for Review is hereby GRANTED. Accordingly, the deficiency VAT assessment for taxable year 2007 and the compromise penalty are hereby CANCELLED and WITHDRAWN, on ground of prescription.
>
> SO ORDERED.[10]

The CIR moved for reconsideration but its motion was denied.

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[8] *Id*. at 130-132.

[9] *Id*. at 208.

[10] *Id*. at 210.

The CTA En Banc Ruling

In its July 30, 2015 Decision, the CTA *En Banc* sustained the assailed decision of the CTA Division and dismissed the petition for review filed by the CIR. It explained that there was nothing in the FAN and the FDDA that would indicate the non-application of the three (3) year prescriptive period under Section 203 of the NIRC. It found that the CIR did not present any evidence during the trial to substantiate its claim of falsity in the returns and again missed its chance to do so when it failed to file its memorandum before the CTA Division.

The CTA *En Banc* further explained that the PAN alone could not be used as a basis because it was not the assessment contemplated by law. Consequently, the allegation of falsity in Asalus' tax returns could not be considered as it was not reiterated in the FAN. The dispositive portion thus reads:

> WHEREFORE, premises considered, the present Petition for Review is hereby DENIED, and accordingly, DISMISSED for lack of merit.
>
> SO ORDERED.[11]

The CIR sought the reconsideration of the decision of the CTA *En Banc*, but the latter upheld its decision in its November 6, 2015 resolution.

Hence, this petition.

ISSUES

I

WHETHER PETITIONER HAD SUFFICIENTLY APPRISED RESPONDENT THAT THE FAN AND FDDA ISSUED AGAINST THE LATTER FALLS UNDER SECTION 222(A) OF THE 1997 NIRC, AS AMENDED;

II

WHETHER RESPONDENT'S FAILURE TO REPORT IN ITS VAT RETURNS ALL THE FEES IT COLLECTED FROM ITS

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[11] *Id.* at 26.

MEMBERS APPLYING FOR HEALTHCARE SERVICES CONSTITUTES "FALSE" RETURN UNDER SECTION 222(A) OF THE 1997 NIRC, AS AMENDED; AND

III

WHETHER PETITIONER'S RIGHT TO ASSESS RESPONDENT FOR ITS DEFICIENCY VAT FOR TAXABLE YEAR 2007 HAD ALREADY PRESCRIBED.[12]

The CIR, through the Office of the Solicitor General *(OSG)*, argues that the VAT assessment had yet to prescribe as the applicable prescriptive period is the ten (10)-year prescriptive period under Section 222 of the NIRC, and not the three (3) year prescriptive period under Section 203 thereof. It claims that Asalus was informed in the PAN of the ten (10)-year prescriptive period and that the FAN made specific reference to the PAN. In turn, the FDDA made reference to the FAN. Asalus, on the other hand, only raised prescription in its supplemental protest to the FAN. The CIR insists that Asalus was made fully aware that the prescriptive period under Section 222 would apply.

Moreover, the CIR asserts that there was substantial understatement in Asalus' income, which exceeded 30% of what was declared in its VAT returns as appearing in its quarterly VAT returns; and the underdeclaration was supported by the judicial admission of its lone witness that not all the membership fees collected from members applying for healthcare services were reported in its VAT returns. Thus, the CIR concludes that there was *prima facie* evidence of a false return.

The Position of Asalus

In its Comment/Opposition,[13] dated April 22, 2016, Asalus countered that the present petition involved a question of fact, which was beyond the ambit of a petition for review under Rule 45. Moreover, it asserted that the findings of fact of the

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[12] *Id*. at 50-51.

[13] *Id*. at 247-274.

CTA Division, which were affirmed by the CTA *En Banc*, were conclusive and binding upon the Court. It posited that the CIR could not raise for the first time on appeal a new argument that "the FDDA and the FAN need not explicitly state the applicability of the ten-year prescriptive period and the bases thereof as long as the totality of the circumstances show that the taxpayer was 'sufficiently informed' of the facts in support of the assessment. Based on the totality of the circumstances, it was informed of the facts in support of the assessment."[14]

Asalus reiterated that the CIR, either in the FAN or the FDDA, failed to show that it had filed false returns warranting the application of the extraordinary prescriptive period under Section 222 of the NIRC. It insisted that it was not informed of the facts and law on which the assessment was based because the FAN did not state that it filed false or fraudulent returns. For this reason, Asalus averred that the assessment had prescribed because it was made beyond the three (3)-year period as provided in Section 203 of the NIRC.

The Reply of the CIR

In its Reply,[15] dated August 15, 2016, the CIR argued that the findings of the CTA might be set aside on appeal if they were not supported with substantial evidence or if there was a showing of gross error or abuse. It repeated that there was presumption of falsity in light of the 30% underdeclaration of sales. The CIR emphasized that even Asalus' own witness testified that not all the membership fees collected were reported in its VAT returns. It insisted that Asalus was sufficiently informed of its assessment based on the prescriptive period under Section 222 of the NIRC as early as when the PAN was issued.

On another note, the CIR manifested that Asalus' counsels made use of insulting words in its Comment, which could have been dispensed with. Particularly, it highlighted the use of the

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[14] *Id.* at 262.

[15] *Id*. at 285-302.

following phrases as insulting: "even to the uninitiated," "petitioner's habit of disregarding firmly established rules of procedure," "twist establish facts to suit her ends," "just to indulge petitioner," and "she then tried to calculate, on her own but without factual basis." It asserted that "[w]hile a lawyer has a complete discretion on what legal strategy to employ in a case, the overzealousness in protecting his client's interest does not warrant the use of insulting and profane language in his pleadings xxx."[16]

The Court's Ruling

There is merit in the petition.

It is true that the findings of fact of the CTA are, as a rule, respected by the Court, but they can be set aside in exceptional cases. In *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, this Court in *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*, [17] explicitly pronounced —

> Jurisprudence has consistently shown that this Court accords the findings of fact by the CTA with the highest respect. In *Sea-Land Service, Inc. v. Court of Appeals* [G.R. No. 122605, 30 April 2001, 357 SCRA 441, 445-446], this Court recognizes that the Court of Tax Appeals, which by the very nature of its function is dedicated exclusively to the consideration of tax problems, has necessarily developed an expertise on the subject, and its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority. **Such findings can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the Tax Court.** In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.[18] [Emphasis supplied]

After a review of the records and applicable laws and jurisprudence, the Court finds that the CTA erred in concluding that the assessment against Asalus had prescribed.

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[16] *Id*. at 297.

[17] 529 Phil. 285 (2006).

[18] *Id*. at 794-795.

Generally, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, or where the return is filed beyond the period, from the day the return was actually filed.[19] Section 222 of the NIRC, however, provides for exceptions to the general rule. It states that in the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the assessment may be made within ten (10) years from the discovery of the falsity, fraud or omission.

In the oft-cited *Aznar v. CTA*,[20] the Court compared a false return to a fraudulent return in relation to the applicable prescriptive periods for assessments, to wit:

> Petitioner argues that Sec. 332 of the NIRC does not apply because the taxpayer did not file false and fraudulent returns with intent to evade tax, while respondent Commissioner of Internal Revenue insists contrariwise, with respondent Court of Tax Appeals concluding that the very "substantial under declarations of income for six consecutive years eloquently demonstrate the falsity or fraudulence of the income tax returns with an intent to evade the payment of tax."
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> x x x x x x x x x
>
> x x x We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission**. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which seggregates the situations into three different classes, namely "falsity", "fraud" and "omission." That there is a difference between "false return" and "fraudulent return" cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.**

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[19] Section 203 of the NIRC.

[20] 157 Phil. 510 (1974).

The ordinary period of prescription of 5 years within which to assess tax liabilities under Sec. 331 of the NIRC should be applicable to normal circumstances, but whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns, fraudulent return intended to evade payment of tax or failure to file returns, the period of ten years provided for in Sec. 332 (a) NIRC, from the time of the discovery of the falsity, fraud or omission even seems to be inadequate and should be the one enforced.

There being undoubtedly false tax returns in this case, We affirm the conclusion of the respondent Court of Tax Appeals that Sec. 332 (a) of the NIRC should apply and that the period of ten years within which to assess petitioner's tax liability had not expired at the time said assessment was made. (Emphasis supplied)

Thus, a mere showing that the returns filed by the taxpayer were false, notwithstanding the absence of intent to defraud, is sufficient to warrant the application of the ten (10) year prescriptive period under Section 222 of the NIRC.

Presumption of Falsity of Returns

In the present case, the CTA opined that the CIR failed to substantiate with clear and convincing evidence its claim that Asalus filed a false return. As it noted that the CIR never presented any evidence to prove the falsity in the returns that Asalus filed, the CTA ruled that the assessment was subject to the three (3) year ordinary prescriptive period.

The Court is of a different view.

Under Section 248(B) of the NIRC,[21] there is a *prima facie* evidence of a false return if there is a substantial underdeclaration

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[21] In case of wilful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is wilfully made, the penalty to be imposed shall be fifty (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided*, That a substantial underdeclaration of taxable sales, receipts or income, or

of taxable sales, receipt or income. The failure to report sales, receipts or income in an amount exceeding 30% what is declared in the returns constitute substantial underdeclaration. A *prima facie* evidence is one which that will establish a fact or sustain a judgment unless contradictory evidence is produced.[22]

In other words, when there is a showing that a taxpayer has substantially underdeclared its sales, receipt or income, there is a presumption that it has filed a false return. As such, the CIR need not immediately present evidence to support the falsity of the return, unless the taxpayer fails to overcome the presumption against it.

Applied in this case, the audit investigation revealed that there were undeclared VATable sales more than 30% of that declared in Asalus' VAT returns. Moreover, Asalus' lone witness testified that not all membership fees, particularly those pertaining to medical practitioners and hospitals, were reported in Asalus' VAT returns. The testimony of its witness, in trying to justify why not all of its sales were included in the gross receipts reflected in the VAT returns, supported the presumption that the return filed was indeed false precisely because not all the sales of Asalus were included in the VAT returns.

Hence, the CIR need not present further evidence as the presumption of falsity of the returns was not overcome. Asalus was bound to refute the presumption of the falsity of the return and to prove that it had filed accurate returns. Its failure to overcome the same warranted the application of the ten (10)-year prescriptive period for assessment under Section 222 of

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a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute *prima facie* evidence of a false or fraudulent return; *Provided further*, That a failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deduction in an amount exceeding thirty (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.

[22] *Black's Law Dictionary* (9th Edition).

the NIRC. To require the CIR to present additional evidence in spite of the presumption provided in Section 248(B) of the NIRC would render the said provision inutile.

Substantial Compliance of Notice Requirement

The CTA also posited that the ordinary prescriptive period of three (3) years applied in this case because there was no mention in the FAN or the FDDA that what would apply was the extraordinary prescriptive period and that the CIR did not present any evidence to support its claim of false returns.

Again, the Court disagrees.

It is true that neither the FAN nor the FDDA explicitly stated that the applicable prescriptive period was the ten (10)-year period set in Section 222 of the NIRC. They, however, made reference to the PAN, which categorically stated that "[t]he running of the three-year statute of limitation as provided under Section 203 of the 1997 National Internal Revenue Code (NIRC) is not applicable xxx but rather to the ten (10) year prescriptive period pursuant to Section 222(A) of the tax code xxx."[23] In *Samar-I Electric Cooperative v. COMELEC*,[24] the Court ruled that it sufficed that the taxpayer was substantially informed of the legal and factual bases of the assessment enabling him to file an effective protest, to wit:

> Although the FAN and demand letter issued to petitioner were not accompanied by a written explanation of the legal and factual bases of the deficiency taxes assessed against the petitioner, the records showed that respondent in its letter dated April 10, 2003 responded to petitioner's October 14, 2002 letter-protest, explaining at length the factual and legal bases of the deficiency tax assessments and denying the protest.
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> **Considering the foregoing exchange of correspondence and documents between the parties, we find that the requirement of**

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[23] *Rollo*, p. 139.

[24] G.R. No. 193100, December 10, 2014, 744 SCRA 459.

Section 228 was substantially complied with. Respondent had fully informed petitioner *in writing* of the factual and legal bases of the deficiency taxes assessment, which enabled the latter to file an "effective" protest, much unlike the taxpayer's situation in *Enron.* Petitioner's right to due process was thus not violated. [Emphasis supplied]

Thus, substantial compliance with the requirement as laid down under Section 228 of the NIRC suffices, for what is important is that the taxpayer has been sufficiently informed of the factual and legal bases of the assessment so that it may file an effective protest against the assessment. In the case at bench, Asalus was sufficiently informed that with respect to its tax liability, the extraordinary period laid down in Section 222 of the NIRC would apply. This was categorically stated in the PAN and all subsequent communications from the CIR made reference to the PAN. Asalus was eventually able to file a protest addressing the issue on prescription, although it was done only in its supplemental protest to the FAN.

Considering the existing circumstances, the assessment was timely made because the applicable prescriptive period was the ten (10)-year prescriptive period under Section 222 of the NIRC. To reiterate, there was a *prima facie* showing that the returns filed by Asalus were false, which it failed to controvert. Also, it was adequately informed that it was being assessed within the extraordinary prescriptive period.

A Reminder

A lawyer is indeed expected to champion the cause of his client with utmost zeal and competence. Such exuberance, however, must be tempered to meet the standards of civility and decorum. Rule 8.01 of the Code of Professional Responsibility mandates that "[a] lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper." In *Noble v. Atty. Ailes*,[25] the Court cautioned lawyers to be careful in their choice of words as not to unduly malign the other party, to wit:

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[25] A.C. No. 10628, July 1, 2015, 761 SCRA 1.

Though a lawyer's language may be forceful and emphatic, it should always be dignified and respectful, befitting the dignity of the legal profession. The use of intemperate language and unkind ascriptions has no place in the dignity of the judicial forum. In *Buatis Jr. v. People*, the Court treated a lawyer's use of the words "lousy," "inutile," "carabao English," "stupidity," and "satan" in a letter addressed to another colleague as defamatory and injurious which effectively maligned his integrity. Similarly, the hurling of insulting language to describe the opposing counsel is considered conduct unbecoming of the legal profession.

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On this score, it must be emphasized that membership in the bar is a privilege burdened with conditions such that a lawyer's words and actions directly affect the public's opinion of the legal profession. **Lawyers are expected to observe such conduct of nobility and uprightness which should remain with them**, whether in their public or private lives, and may be disciplined in the event their conduct falls short of the standards imposed upon them. Thus, in this case, it is inconsequential that the statements were merely relayed to Orlando's brother in private. **As a member of the bar, Orlando should have been more circumspect in his words, being fully aware that they pertain to another lawyer to whom fairness as well as candor is owed**. It was highly improper for Orlando to interfere and insult Maximino to his client.

Indulging in offensive personalities in the course of judicial proceedings, as in this case, constitutes unprofessional conduct which subjects a lawyer to disciplinary action. **While a lawyer is entitled to present his case with vigor and courage, such enthusiasm does not justify the use of offensive and abusive language**. The Court has consistently reminded the members of the bar to abstain from all offensive personality and to advance no fact prejudicial to the honor and reputation of a party. xxx[26] [Emphases supplied]

While the Court recognizes and appreciates the passion of Asalus' counsels in promoting and protecting its interest, they must still be reminded that they should be more circumspect in their choice of words to argue their client's position. As much as possible, words which undermine the integrity, competence

[26] *Id*. at 8-9.

and ability of the opposing party, or are otherwise offensive, must be avoided especially if the message may be delivered in a respectful, yet equally emphatic manner. A counsel's mettle will not be viewed any less should he choose to pursue his cause without denigrating the other party.

WHEREFORE, petition is **GRANTED.** The July 30, 2015 Decision and the November 6, 2015 Resolution of the Court of Tax Appeals *En Banc* are **REVERSED** and **SET ASIDE**. The case is ordered **REMANDED** to the Court of Tax Appeals for the determination of the Value Added Tax liabilities of the Asalus Corporation.

SO ORDERED.

Carpio (Chairperson), Peralta, Perlas-Bernabe,[*] and *Leonen, JJ.,* concur.

SECOND DIVISION

[G.R. No. 223073. February 22, 2017]

PJ LHUILLIER, INC., *petitioner, vs.* **HECTOR ORIEL CIMAGALA CAMACHO**, *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; LOSS OF TRUST AND CONFIDENCE; REQUISITES.— Article 282(c) of the *Labor Code* authorizes the employer to dismiss an employee for committing fraud or for willful breach of trust reposed by the employer on the employee. Loss of confidence, however,

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[*] Designated additional member per Special Order No. 2416-P dated January 4, 2017.

is never intended to provide the employer with a blank check for terminating its employees. "Loss of trust and confidence" should not be loosely applied in justifying the termination of an employee. Certain guidelines must be observed for the employer to cite loss of trust and confidence as a ground for termination. Loss of confidence should not be simulated. It should not be used as a subterfuge for causes which are improper, illegal, or unjustified. Loss of confidence may not be arbitrarily asserted in the face of overwhelming evidence to the contrary. It must be genuine, not a mere afterthought to justify earlier action taken in bad faith." For loss of trust and confidence to be valid ground for termination, the employer must establish that: (1) the employee holds a position of trust and confidence; and (2) the act complained against justifies the loss of trust and confidence.

2. ID.; ID.; ID.; ID.; ID.; POSITIONS OF TRUST; CLASSES.— The first requisite mandates that the erring employee must be holding a position of trust and confidence. Loss of trust and confidence is not a one-size-fits-all cause that can be applied to all employees without distinction on their standing in the work organization. Distinction yet should be made as to what kind of position of trust is the employee occupying. The law contemplates two (2) classes of positions of trust. The first class consists of *managerial employees*. They are as those who are vested with the power or prerogative to lay down management policies and to hire, transfer, suspend, layoff, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. The second class consists of *cashiers, auditors, property custodians, etc*. who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property. x x x Camacho held a managerial position and, therefore, enjoyed the full trust and confidence of his superiors. As a managerial employee, he was "bound by more exacting work ethics" and should live up to this high standard of responsibility.

3. ID.; ID.; ID.; ID.; ID.; FOR A MANAGERIAL EMPLOYEE TO BE TERMINATED ON THE GROUND OF LOSS OF CONFIDENCE, IT IS SUFFICIENT THAT THERE IS SOME BASIS FOR BELIEVING THAT HE HAD BREACHED THE TRUST OF HIS EMPLOYER.— The second requisite for loss of confidence as a valid ground for termination is that it must be based on a willful breach of trust and founded on clearly established facts. x x x Camacho, as

AOM, was a managerial employee. As such, he could be terminated on the ground of loss of confidence by **mere existence of a basis for believing that he had breached the trust of his employer. Proof beyond reasonable doubt is not required. It would already be sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the concerned employee is responsible for the purported misconduct and the nature of his participation therein.** This distinguishes a managerial employee from a fiduciary rank-and-file where loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertion and accusation by the employer will not be sufficient. In this case, there was such basis. It was established that Camacho had breached PJLI's trust when he took an unauthorized person with him to the QTP operation which was already a violation of company existing policy and security protocol.

APPEARANCES OF COUNSEL

Maria Rosario E. Ereño for petitioner.
Galon and Partners Law Office for respondent.

D E C I S I O N

MENDOZA, *J.*:

This Petition for Review under Rule 45 of the Rules of Court seeks to annul the August 28, 2015 Decision[1] and the February 19, 2016 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 134879, which reversed and set aside the December 27, 2013[3] and February 10, 2014[4] Resolutions of the National Labor Relations Commission, 4th Division, Quezon City (*NLRC*)

[1] *Rollo*, pp. 30-40. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justice Normandie B. Pizarro and Associate Justice Samuel H. Gaerlan, concurring.

[2] *Id*. at 42-44.

[3] *Id*. at 167-175.

[4] *Id*. at 185-186.

in NLRC LAC No. 06-001854-13, in a complaint for illegal dismissal.

The Antecedents

On July 25, 2011, petitioner P.J. Lhuillier, Inc. (*PJLI*), the owner and operator of the "Cebuana Lhuillier" chain of pawnshops, hired petitioner Feliciano Vizcarra (*Vizcarra*) as PLJI's Regional Manager for Northern and Central Luzon pawnshop operations[5] and respondent Hector Oriel Cimagala Camacho (*Camacho*) as Area Operations Manager (*AOM*) for Area 213, covering the province of Pangasinan. Camacho was assigned to administer and oversee the operations of PJLI's pawnshop branches in the area.[6]

On May 15, 2012, Vizcarra received several text messages from some personnel assigned in Area 213, reporting that Camacho brought along an unauthorized person, a non-employee, during the QTP operation (pull-out of "rematado" pawned items) from the different branches of Cebuana Lhuillier Pawnshop in Pangasinan. On May 18, 2012, Vizcarra issued a show cause memorandum directing Camacho to explain why no disciplinary action should be taken against him for violating PJLI's Code of Conduct and Discipline which prohibited the bringing along of non-employees during the QTP operations.[7] Camacho, in his Memorandum,[8] apologized and explained that the violation was an oversight on his part for lack of sleep and rest. With busy official schedules on the following day, he requested his mother's personal driver, Jose Marasigan (*Marasigan*) to drive him back to Pangasinan. He admitted that Marasigan rode with him in the service vehicle during the QTP operations.

During the formal investigation on June 1, 2012, Camacho admitted that he brought along a non-employee, Marasigan, during the QTP operations on May 15, 2012. He explained that

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[5] *Id.* at 31.

[6] *Id.* at 30-31.

[7] *Id.* at 31-32.

[8] *Id.* at 56.

on May 12, 2012, he went home to Manila to celebrate Mother's Day with his family on May 13, 2012. He drove himself using the service vehicle assigned to him and arrived in Manila at around 11:00 o'clock in the evening. As he was expecting a hectic work schedule the following day and was feeling tired due to lack of sleep for the past few days, he asked Marasigan to drive him back to Pangasinan so he could catch some sleep on the way. Marasigan was supposed to return to Manila on May 15, 2012, but because he was scheduled to go back to Manila on May 18, 2012, to attend a regional conference in Antipolo, he asked the former to remain in Pangasinan so that they could travel back together to Manila on May 17, 2012. On the day of the QTP operations, Marasigan drove the service vehicle from his apartment to the Area Office. Upon reaching the Area Office, the Area Driver took over while Marasigan sat in the backseat of the vehicle. Camacho admitted that he knew that it was prohibited to bring unauthorized personnel, especially a non-employee, during the QTP operations because this was discussed in the seminars facilitated by the company's Security Service Division. He only realized his mistake at the end of their 13-branch stop when he noticed that his companions were unusually quiet throughout the trip.[9] It was also discovered that Camacho committed another violation of company policy when he allowed an unauthorized person to drive a company vehicle.

On June 14, 2012, the Formal Investigation Committee issued the Report of Formal Investigation.[10] The committee concluded that Camacho was guilty as charged. It could not accept his explanation that the confidentiality of the QTP operation slipped his mind because of his exhausting travel to Manila and, thus, recommended that his services be terminated. According to the report, his act of bringing along an unauthorized person, a non-employee, during the QTP operation was a clear violation of an established company policy designed to safeguard the pawnshop against robberies and untoward incidents. His act

[9] *Id*. at 58.

[10] *Id*. at 60-62.

was a "willful neglect of duty which cause[d] prejudice to the Company."[11]

On the basis of the June 14, 2012 Report of Formal Investigation, Vizcarra issued to Camacho the Notice of Disciplinary Action[12] where he was meted the penalty of Termination. This prompted him to file a complaint[13] before the Labor Arbiter (*LA*) against the petitioners for illegal dismissal, money claims, damages, and attorney's fees.

The LA Ruling

In its May 14, 2013 Decision,[14] the LA sustained Camacho's termination. He reasoned out in this wise:

> As such, **the fact that the Complainant admitted that he violated the rules and regulations of the Respondents by bringing along his driver, a non-employee and an unauthorized person, during the "QTP" operations, despite being fully aware that the same was prohibited, the Respondents were clearly justified to terminate the employment of the Complainant on the ground of loss of trust and confidence** in view of the trust reposed upon the Complainant by the Respondents by virtue of his position as Area Operations Manager.
>
> Further, this Office finds that the Respondents have complied with the requirements of due process because, aside from the show-cause memorandum xxx, an administrative hearing was held in order to give the Complainant an opportunity to explain his side of the controversy.
>
> Verily, there being a just cause to terminate the Complainant coupled by the compliance with the requirements of due process, it logically follows that the Complainant was not illegally dismissed.[15] [Emphasis and Underscoring Supplied]

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[11] *Id.* at 62.

[12] *Id.* at 63.

[13] *Id*. at 64-65.

[14] *Id*. at 114-121. Penned by Labor Arbiter Rommel R. Veluz.

[15] *Id*. at 120.

Aggrieved, Camacho appealed the LA decision to the NLRC, questioning the harshness of the penalty meted out by PJLI. He argued that the infractions were purely unintentional and no more than an oversight on his part.

The NLRC Ruling

In its August 30, 2013 Decision, the NLRC *reversed* and *set aside* the May 14, 2013 Decision of the LA. It declared the dismissal of Camacho as illegal. It opined that there was no indication that Camacho, in allowing his mother's driver to be present during the conduct of the QTP operation, was motivated by malicious intent so as to construe the infraction as serious misconduct punishable by dismissal. The infraction, if at all, constituted "nothing more than an oversight or inadvertence, if not a necessity for him to conserve his energy and stay alert during the QTP Operation" xxx. The conduct could not be considered as gross so as to warrant the imposition of the supreme penalty of dismissal.[16]

Dissatisfied with the said pronouncement, PJLI filed its Motion for Reconsideration[17] praying that the May 14, 2013 Decision of the LA be reinstated.

After a re-evalution of the case, in its December 27, 2013 Resolution, the NLRC found cogent reason to *set aside* its August 30, 2013 Decision. It ruled that Camacho's transgression of the company policy warranted his termination from the service. It wrote:

> Xxx. When the complainant brought his personal drive and allowed the latter to ride in the company vehicle during the QTP operations on 15 May 2012, in utter violation of the respondent company's policy, the same was detrimental not only to the interests of the respondent company, but also to the interest of the persons who pawned the "*rematado*" items.[18]

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[16] *Id*. at 153.

[17] *Id*. at 157-163.

[18] *Id*. at 170.

Thus, the decretal portion of the decision reads:

IN VIEW WHEREOF, the Respondent's Motion for Reconsideration is **GRANTED** and the assailed Decision is hereby **SET ASIDE**. The Labor Arbiter's Decision is hereby **REINSTATED**.

SO ORDERED.[19]

Camacho moved for a reconsideration but his motion was denied in the NLRC Resolution of February 10, 2014.

Aggrieved, Camacho filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA.

The CA Ruling

In its August 28, 2015 Decision, the CA *reversed* the NLRC resolutions. It held that contrary to the findings of the LA and the NLRC, the misconduct of Camacho was not of a serious nature as to warrant a dismissal from work. At most, said the CA, he was negligent and remiss in the exercise of his duty as an AOM. There was no evidence that would show that said act was performed with wrongful intent. Moreover, Camacho's termination from work could not be justified on the ground of loss of trust and confidence. For loss of trust and confidence to be a valid ground, explained the CA, it must be based on willful breach of the trust reposed in the employee by his employer. The breach must have been made intentionally, knowingly, and purposely without any justifiable excuse as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. In this case, the CA found that Camacho's act of bringing along his mother's driver during the QTP operation was not willful as it was not done intentionally, knowingly and purposely. It was committed carelessly, thoughtlessly, heedlessly or inadvertently. Even Camacho himself admitted that it was merely a case of human error on his part, the same being prompted by his desire to finish his work as soon as possible.[20]

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[19] *Id*. at 174.

[20] *Id*. at 35-37.

In sum, the CA held that Camacho was illegally dismissed. The *fallo* of the assailed decision reads:

> **WHEREFORE**, the instant Petition is **GRANTED**. The Resolutions promulgated on December 27, 2013 and February 10, 2014 of the NLRC, 4th Division, Quezon City in NLRC LAC No. 06-001854-13 are hereby **REVERSED** and **SET ASIDE**. The Decision of the said Commission promulgated on August 30, 2013 declaring the dismissal of petitioner as illegal is hereby **REINSTATED**.
>
> **SO ORDERED**.[21]

In February 19, 2016 Resolution,[22] the CA denied PJLI's motion for reconsideration.

Hence, this petition.

ISSUES:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN RULING THAT PETITIONER FAILED TO COMPLY WITH THE SUBSTANTIVE REQUIREMENTS OF DUE PROCESS IN THE DISMISSAL OF RESPONDENT.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN RULING THAT THE PENALTY OF DISMISSAL WAS DISPROPORTIONATE TO THE INFRACTION COMMITTED DUE TO LACK OF MALICIOUS INTENT ON THE PART OF RESPONDENT.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN RULING THAT RESPONDENT IS ENTITLED TO REINSTATEMENT, BACKWAGES, 14TH MONTH PAY AND ATTORNEY'S FEES.[23]

Petitioner PJLI basically argues that Camacho was guilty of serious misconduct when he brought along an unauthorized driver

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[21] *Id*. at 39-40.

[22] *Id.* at 42-44.

[23] *Id*. at 18.

during the QTP operation prompting it to lose trust and confidence in him. Such was a valid ground for his dismissal from service.

First, the CA failed to consider the fact that during the QTP operation, it was neither Camacho nor his personal driver who drove the company car. As a policy, in a QTP operation, a company driver (*Area Driver*) is assigned to do the driving. As AOM, his participation in a QTP operation was limited to oversee the safe transport of company assets. He was not to drive the vehicle. A driver was already assigned to him. As such, the fact that he was feeling under the weather was not a good reason to bring along his mother's driver. This was the reason why during the course of the QTP operations, his personal driver had to seat only at the back of the vehicle. The presence of his personal driver was simply unnecessary, unjustified, and unwanted.[24]

Second, PJLI has lost its trust and confidence on Camacho. PJLI considered his breach of the said established security protocol as willful, contrary to the CA's finding. PJLI finds it hard to believe that his act was done carelessly, thoughtlessly, heedlessly or inadvertently. It points out that on the day before the May 15, 2012 QTP operation, he left his personal driver in his apartment when he went to work on that day. On the day of the QTP operation, however, a day which he knew that there would be a delicate operation, he decided to bring him along. Clearly, the act was intended and not a mere oversight.[25]

Third, considering the attendant circumstances surrounding the controversy, PJLI insists that the penalty of dismissal was proper. As AOM, Camacho was expected to administer and oversee the operations of the branches in his area. He was the eyes and ears of the company in all the operations and the overall performances of his area. He was the steward of the assets of the company so much so that the highest level of trust and

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[24] *Id.* at 19-20.

[25] *Id*. at 22.

confidence was reposed on him. This trust was lost when he breached a strict security regulation designed to protect the assets and employees of PJLI. The act in question was a disregard of PJLI's mandate, a behavior deleterious to the latter's interest.

Finally, PJLI reiterates that it complied with the requirements of both substantive and procedural due process in effecting Camacho's dismissal; thus, the latter was not entitled to reinstatement, backwages, 14th month pay, and attorney's fees.

Position of Camacho

In his *Comment*,[26] dated July 28, 2016, Camacho countered that when he let his personal driver join the QTP operation, he merely acted carelessly, thoughtlessly or heedlessly and not intentionally, knowingly, purposely, or without justifiable excuse. Simply put, the act was a mere oversight.[27] As such, his transgression could not be considered so gross as to warrant his termination. To consider "gross neglect of duty," the negligence must be "characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected."[28]

According to Camacho, considering that his act was not done intentionally, knowingly, purposely, or without justifiable excuse, it could not be the basis for loss of trust and confidence, a ground for dismissal.[29] The infraction "was brought about by poor physical and health condition of the respondent which caused his indecision in bringing along his mother's driver in the QTP operations to assist him."[30]

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[26] *Id*. at 258-267.

[27] *Id*. at 259.

[28] *Id*. at 259-260.

[29] *Id*. at 261.

[30] *Id.* at 262.

Camacho asserted that he should not be meted out with the ultimate penalty of dismissal especially that no material damage was incurred by PJLI.

The Court's Ruling

The Court finds merit in the petition.

The core issue to be resolved in this case is whether respondent Camacho was illegally dismissed.

Security of Tenure v. Management Prerogative

To begin with, it is well to recognize the Court's discussion in *Imasen Philippine Manufacturing Corp. v. Alcon*,[31] on security of tenure *viz-à-viz* management prerogative, to wit:

> The law and jurisprudence guarantee to every employee security of tenure. This textual and the ensuing jurisprudential commitment to the cause and welfare of the working class proceed from the social justice principles of the Constitution that the Court zealously implements out of its concern for those with less in life. Thus, the Court will not hesitate to strike down as invalid any employer act that attempts to undermine workers' tenurial security. All these the State undertakes under Article 279 (now Article 293) of the Labor Code which bar an employer from terminating the services of an employee, except for just or authorized cause and upon observance of due process.
>
> In protecting the rights of the workers, the law, however, does not authorize the oppression or self-destruction of the employer. The constitutional commitment to the policy of social justice cannot be understood to mean that every labor dispute shall automatically be decided in favor of labor. The constitutional and legal protection equally recognize the employer's right and prerogative to manage its operation according to reasonable standards and norms of fair play.
>
> Accordingly, except as limited by special law, an employer is free to regulate, according to his own judgment and discretion, all aspects of employment, including hiring, work assignments, working methods,

[31] G.R. No. 194884, October 22, 2014, 739 SCRA 186.

time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, worker supervision, layoff of workers and the discipline, dismissal and recall of workers. As a general proposition, an employer has free reign over every aspect of its business, including the dismissal of his employees as long as the exercise of its management prerogative is done reasonably, in good faith, and in a manner not otherwise intended to defeat or circumvent the rights of workers.[32]

From the foregoing, the Court is now tasked with the balancing of Camacho's right to security of tenure and of PJLI's right to terminate erring employees in its exercise of its management prerogative.

Loss of Trust and Confidence

Article 282(c) of the *Labor Code* authorizes the employer to dismiss an employee for committing fraud or for willful breach of trust reposed by the employer on the employee. Loss of confidence, however, is never intended to provide the employer with a blank check for terminating its employeea.[33] "Loss of trust and confidence" should not be loosely applied in justifying the termination of an employee. Certain guidelines must be observed for the employer to cite loss of trust and confidence as a ground for termination. Loss of confidence should not be simulated. It should not be used as a subterfuge for causes which are improper, illegal, or unjustified. Loss of confidence may not be arbitrarily asserted in the face of overwhelming evidence to the contrary. It must be genuine, not a mere afterthought to justify earlier action taken in bad faith."[34] For loss of trust and confidence to be valid ground for termination, the employer must establish that: (1) the employee holds a position of trust

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[32] *Id*. at 194-195.

[33] *Lagahit v. Pacific Concord Container Lines*, G.R. No. 177680, January 13, 2016.

[34] *Wesleyan University Philippines v. Reyes*, G.R. No. 208321, July 30, 2014, 731 SCRA 516, 530-531.

and confidence; and (2) the act complained against justifies the loss of trust and confidence.[35]

The first requisite mandates that the erring employee must be holding a position of trust and confidence. Loss of trust and confidence is not a one-size-fits-all cause that can be applied to all employees without distinction on their standing in the work organization. Distinction yet should be made as to what kind of position of trust is the employee occupying.

The law contemplates two (2) classes of positions of trust. The first class consists of *managerial employees*. They are as those who are vested with the power or prerogative to lay down management policies and to hire, transfer, suspend, layoff, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. The second class consists of *cashiers, auditors, property custodians, etc*. who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.[36]

The question now is: To what classification does Camacho belong?

The parties do not dispute that Camacho was hired by PJLI as AOM of Area 213 which covered the province of Pangasinan. He was primarily responsible for administering and controlling the operations of branches in his assigned area, ensuring cost efficiency, manpower productivity and competitiveneness. He was also responsible for overseeing/monitoring the overall security and integrity in the area, including branch personnel safety, in coordination with PJLI's Security Services Division.[37] In fact, as stated by the CA, his position required the utmost trust and confidence as it entailed the custody, handling, or care and protection of PJLI's property.[38] Furthermore, as AOM,

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[35] *Lagahit v. Pacific Concord Container Lines, supra* note 33.

[36] *Prudential v. NLRC*, 687 Phil. 351, 363 (2012).

[37] *Rollo*, p. 12.

[38] *Id.* at 37.

he was among those employees authorized to participate in the QTP operations. He was tasked in overseeing the safe transport and handling of company assets during the said operations.[39]

Clearly from the foregoing, it can be deduced that Camacho held a managerial position and, therefore, enjoyed the full trust and confidence of his superiors. As a managerial employee, he was "bound by more exacting work ethics" and should live up to this high standard of responsibility."[40]

The second requisite for loss of confidence as a valid ground for termination is that it must be based on a willful breach of trust and founded on clearly established facts.

As can be culled from the records of the case, Camacho admitted that he had committed a breach of trust when he brought along his mother's driver, an unauthorized person, during the QTP operation, a very sensitive and confidential operation. As explained by PJLI in its petition for review:

> Xxx. On a daily basis, each Cebuana Lhuillier Pawnshop branch accepts valuable jewelry items, among other personal properties, as collaterals for loans extended to its customers (pawners). When the loans expire without the pawners redeeming their collaterals, the items are considered foreclosed or *rematado*. The *rematado* items are then collected from the different Cebuana Lhuillier branches within the area by authorized personnel for transport and deposit to another location. Thus, a single incident of *rematado* pull-out involves millions and millions worth of jewelry items. **This process of collection of *rematado* items is so sensitive and confidential that even the procedure itself is referred to by code, that is, "*QTP operations*." The schedule and route of a QTP operation are kept confidential by the AOM and the Regional Manager until the actual date and only a select group of area personnel are authorized to join the operation, namely, the AOM, the ATA or in their absence the Area Cashier, and the Area Driver.** Even branch personnel are not privy to the schedule of the pull-out of their branch's *rematado*

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[39] *Id.* at 159.

[40] *Reyes-Rayel v. Philippine Luen Thai Holdings, Corp.*, 690 Phil. 533, 547 (2012).

items. **These regulations and procedures are in place for a reason. PJLI has been victimized by highway roberry, hold-up and hijack incidents in the past.** As it can no longer afford to put its assets and lives and safety of its employees at risk, Petitioner adopted confidential and stringent rules on QTP operations.[41] [Emphasis and Underscoring supplied]

In order to save himself from the effects of his transgression, Camacho leans on the argument that his indiscretion was only an oversight and human error on his part and that his missteps did not result to damage or loss on PJLI.[42] For this reason, he claims he should not be penalized with termination from the service.

The Court is not persuaded.

Camacho, as AOM, was a managerial employee. As such, he could be terminated on the ground of loss of confidence by **mere existence of a basis for believing that he had breached the trust of his employer. Proof beyond reasonable doubt is not required. It would already be sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the concerned employee is responsible for the purported misconduct and the nature of his participation therein.** This distinguishes a managerial employee from a fiduciary rank-and-file where loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertion and accusation by the employer will not be sufficient. [43]

In this case, there was such basis. It was established that Camacho had breached PJLI's trust when he took an unauthorized person with him to the QTP operation which was already a violation of company existing policy and security protocol. His explanation that his alleged misdeed was brought about by his

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[41] *Rollo*, pp. 20-21.

[42] *Id*. at 262.

[43] *Lima Land, Inc. v. Cuevas*, 635 Phil. 36, 48-49 (2010).

poor physical and health condition on that day could not prevail over two significant details that PJLI pointed out in its petition, to wit:

> First of all, the Honorable Court of Appeals failed to consider one very important fact—— it was NOT Respondent nor his personal driver who drove the service vehicle during the QTP operations. A company driver, more specifically the Area Driver, is assigned to perform this task, and he is one of only three (3) authorized personnel allowed to be present during a QTP operation. Xxx. **He is NOT authorized to drive the vehicle. He is not expected to perform any heavy physical work during this procedure.** Thus, whether Respondent was not in his best health condition that day is immaterial. **There was no excuse at all for Respondent to bring his personal driver. As a matter of fact, all that Respondent's driver did during the May 15, 2012 pull-out of rematado items was to sit back and watch while the highly-confidential operation was in progress**. Clearly, the presence of Respondent's personal driver was unnecessary, unjustified, and unwarranted.
>
> Secondly, the Honorable Court of Appeals overlooked a very crucial detail in the sequence of events relating to the instant case. **A day prior to the May 15, 2012 QTP operations, Respondent personal driver was left behind in his (Respondent's) apartment in Pangasinan while Respondent went through his usual work routine. If he was able to do this on May 14, 2012, why did he bring his driver to work on May 15, 2012**? Assuming he could not leave his driver behind in his apartment, he should have at least asked the driver to wait in his office until the QTP operations in 13 pawnshop branches was completed. It is therefore mysterious, highly suspicious in fact, that Respondent had to bring his driver on the day he was to conduct a highly-critical and confidential operation, a schedule he himself has pre-determined.[44] [Emphases Supplied]

Simply put, his act was without justification. For this transgression, petitioner PJLI was placed in a difficult position of withdrawing the trust and confidence that it reposed on respondent Camacho and eventually deciding to end his employment. "Unlike other just causes for dismissal, trust in

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[44] *Rollo*, pp. 19-20.

an employee, once lost is difficult, if not impossible, to regain."[45] PJLI cannot be compelled to retain Camacho who committed acts inimical to its interests. A company has the right to dismiss its employees if only as a measure of self-protection.[46]

Finally, although it may be true that PJLI did not sustain damage or loss on account of Camacho's action, this is not reason enough to absolve him from the consequence of his misdeed. The fact that an employer did not suffer pecuniary damage will not obliterate the respondent's betrayal of trust and confidence reposed on him by his employer.[47]

WHEREFORE, the petition is **GRANTED**. The assailed August 28, 2015 Decision and the February 19, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 134879 are **REVERSED** and **SET ASIDE**. The December 27, 2013 Resolution of the National Labor Relations Commission in NLRC LAC No. 06-001854-13 is **REINSTATED**.

SO ORDERED.

Carpio (Chairperson), Peralta, Leonen, and *Jardeleza, JJ.*, concur.

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[45] *Matis v. Manila Electric Company*, G.R. No. 206629, September 14, 2016.

[46] *Alvarez v. Golden Tri Bloc, Inc.*, 718 Phil. 415, 428 (2013).

[47] *United South Dockhandlers, Inc. v. National Labor Relations Commission,* 335 Phil. 76, 81-82 (1997).

THIRD DIVISION

[G.R. No. 223768. February 22, 2017]

OFFICE OF THE DEPUTY OMBUDSMAN FOR THE MILITARY AND OTHER LAW ENFORCEMENT OFFICES, *petitioner, vs.* **P/S SUPT. LUIS L. SALIGUMBA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; SIMPLE NEGLECT OF DUTY; THE OFFICIAL'S NEGLECT TO EFFICIENTLY AND EFFECTIVELY DISCHARGE HIS FUNCTIONS AND RESPONSIBILITIES CONSTITUTES SIMPLE NEGLECT OF DUTY; CASE AT BAR.— An examination of the records persuasively shows that the Office of the Ombudsman correctly held respondent guilty of simple neglect of duty. The complaint charges respondent, as member of the IAC, together with other public individuals, with Gross Neglect of Duty and Gross Incompetence resulting from various irregularities in the procurement of PRBs and OBMs to be used by the PNP Maritime Group. Under the PNP Procurement Manual, Series of 1997, the IAC is tasked to: a. Inspect deliveries in accordance with the terms and conditions of procurement documents; b. Accept or reject the deliveries; and c. Render Inspection and Acceptance Report to the Head of Procuring Agency. In this case, respondent evidently neglected to efficiently and effectively discharge his functions and responsibilities. In his Counter-Affidavit, he even admitted that he did not personally inspect the deliveries since a group of experts and selected personnel knowledgeable of rubber boats had conducted the inspection for him. While they are not mandated to exclusively inspect the items delivered, respondent and other IAC members should not have merely relied on the reports and instead confirmed such findings by personally inspecting the deliveries, especially since there were noted discrepancies from the report. Prudence dictates that respondent should have brought it upon himself to personally check the said items. He cannot justify his acceptance of the

deliveries when the very WTCD reports IAC members relied upon already show deviations of the NAPOLCOM specifications.

2. ID.; ID.; ID.; ID.; CLASSIFIED AS A LESS GRAVE OFFENSE PUNISHABLE BY SUSPENSION WITHOUT PAY FOR ONE MONTH AND ONE DAY TO SIX MONTHS.— Simple neglect of duty means the failure of an employee or official to give proper attention to a task expected of him or her, signifying a "disregard of a duty resulting from carelessness or indifference." Respondent and other members of the IAC fell short of the reasonable diligence required of them, for failing to perform the task of inspecting the deliveries in accordance with the conditions of the procurement documents and rejecting said deliveries in case of deviation. Simple neglect of duty is classified as a less grave offense punishable by suspension without pay for one month and one day to six months. Thus the imposition of the penalty of six months suspension by the Ombudsman is proper.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Benjamin A. Moraleda, Jr. for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

For resolution is the Petition for Review on Certiorari under Rule 45 of the Rules of Court filed by petitioner Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices against respondent P/S Supt. Luis L. Saligumba, assailing the December 23, 2014 Decision[1] and March 21, 2016 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 130930.

The facts, as narrated by the CA, follow:

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[1] *Rollo*, pp. 79-109. Penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela.

[2] *Id*. at 110.

The Annual Procurement Plan for the CY 2008 of the PNP, under the Capability Enhancement Program Funds, included the procurement of 75 police rubber boats (PRBs) and 18 spare engines or outboard motors (OBMs), to be used by the PNP Maritime Group (MG). As the end-user of the PRBs and spare OBMs, the MG created a Technical Working Group (TWG) 'tasked to determine the best suited watercraft for maritime law enforcement and maritime security mandates' of the MG.

x x x x x x x x x

The MG-TWG thereafter revised on 20 October 2008 its recommended specifications as follows:

Item	**Specifications**
Measurement:	
Length	4.5 – 5.5 meters
Breadth	1.7 – 2.5 meters
Inside Length	3.2 – 5.2 meters
Inside Breadth	0.7 – 1.5 meters
Capacity	10 Persons minimum
Engine	Single OBM Min 60HP/4 stroke EFI
Speed	20 knots

Respondent Angelo H. Sunglao, then Director of the MG, signed and approved MG-TWG Resolution No. 2008-01 dated 27 May 2008 and its revised form dated 20 October 2008.

Revised Resolution No. 2008-01 was submitted to the PNP Uniform and Equipment Standardization Board (UESB). x x x [In] its Resolution No. 2008-34 dated 7 November 2008, the UESB adopted *in toto* the PRB standard specifications recommended by the MG-TWG.

UESB Resolution No. 2008-34 was endorsed to the National Police Commission (NAPOLCOM) for final approval. x x x [The] NAPOLCOM issued Resolution No. 2009-223 dated 16 April 2009 providing for the standard specifications for PRBs, to wit:

Item	Specifications
Measurement:	
Overall Length	4.5 to 5.9 meters
Overall Breadth	1.7 to 2.7 meters
Inside Length	3.2 to 5.2 meters
Inside Breadth	0.7 – 1.6 meters
Capacity	12 persons maximum
Engine	Single OBM, 40 horsepower (min) 4-stroke EFI or *BETTER*
Speed	20 knots (minimum)

The NAPOLCOM reduced the engine requirement to 40 horsepower (HP) minimum to enable proponents to comply therewith, 'for the UESB proposal of 60HP minimum engine requirement for the outboard motor (OBM) appears too high to the common engine specifications.' The minimum capacity of 10 persons in the UESB proposal was changed to 12 persons 'for the reason that reference to a minimum capacity may not limit the number of passengers of the boat.'

x x x x x x x x x

On 9 September 2009, the PNP National Headquarters Bids and Awards Committee (NHQ BAC) conducted the opening of bids for '1 lot for 75 units of PRBs and 18 units of 40HP spare engines.' x x x

Three proponents participated in the bidding, namely: 1) Joint Venture of EnviroAire and Stoneworks Specialist International Corporation; 2) Joint Venture of ACMI Office Systems and Qinhuando Yaohuan RPF; and 3) Joint Venture of FABMIK Construction and Equipment Co. and Geneve S.A. Phils., Inc. Only the Joint Venture of EnviroAire and Stoneworks Specialist International Corporation passed the eligibility check and its bid was found to be within the approved budget for the contract, hence, the said venture was set for post-qualification.

Pending result of the post-qualification, typhoons *Ondoy* and *Pepeng* struck the country. Citing as reason the emergency situation brought by the typhoons, the NHQ BAC, in its Resolution No. 2009-61 dated 19 October 2009, recommended to the PNP Chief the discontinuance of the bidding process for the PRBs and spare OBMs and the resort to negotiated procurement x x x.

x x x x x x x x x

Pursuant to the approved NHQ BAC Resolution No. 2009-61, a Negotiation Committee was created x x x [to undertake] negotiation for the procurement of 75 PRBs and 18 spare OBMs on 21 October 2009 with invited suppliers, namely, EnviroAire, Inc. ('EnviroAire'), Geneve SA Philippines ('Geneve'), Bay Industrial Philippines Corp. ('Bay Industrial'), and ACMI.

During the negotiation, the Committee required that: 'a) the delivery of the PRBs and Spare Engines for the PRBs should be made within two weeks from receipt of the notice to proceed or earlier; b) the items offered must conform to the NAPOLCOM approved technical specifications; and c) the price must be the same with the price submitted during the public bidding held on September 9, 2009, or lower. According to the Negotiation Committee, however, 'none of the suppliers could deliver the entire 75 units PRB and 18 units Spare Engines for PRBs within a period of two weeks, [the suppliers] claiming that their respective principals do not have sufficient stocks of rubber boats consistent with the specifications of the PNP' and they could only deliver within two weeks the following:

Supplier	Item	Quantity
EnviroAire	PRB	24
	OBM	93
Geneve	PRB	41
Bay Industrial	PRB	10

To address the situation where none of the invited suppliers could solely deliver the 75 PRBs and 18 spare OBMs within two weeks from notice to proceed, the NHQ BAC issued Resolution No. 2009-76 dated 24 November 2009 recommending the revision of the PNP Annual Procurement Plan for CY 2008 with respect to the procurement of PRBs to reflect separate purchase of OBMs from PRBs, to wit:

Items	ABC/Unit	Total ABC
75 unit PRBs	₱1,199,000.00	₱89,925,000.00
93 units OBMs	₱500,000.00	₱46,500,000.00

x x x x x x x x x

On 18 December 2009, the NHQ BAC Negotiation Committee issued Resolution No. 2009-13 recommending the award of contracts and purchase orders to the following suppliers:

Supplier	Units	Amount
EnviroAire	24 PRBs without engine	₱27,960,000.00
	93 60HP OBMs	₱44,175,000.00
Geneve	41 PRBs without engine	₱47,765,000.00
Bay Industrial	10 PRBs without engine	₱11,650,000.00
Total		₱131,550,000.00

The recommendation was adopted by the NHQ BAC in its Resolution No. 2009-93 dated 18 December 2009, which resolution was approved by respondent Verzosa as PNP Chief. The PNP, represented by respondent Ticman, entered into four separate supply contracts all dated 18 December 2009 with the following suppliers:

a) EnviroAire represented by respondent Harold Ong for the supply of 93 units of OBM Mercury 60 Horse Power with a total contract price of ₱44,175,000.00;

b) EnviroAire represented by respondent Harold Ong for the supply of 10 units of PRB with a total contract price of ₱11,650,000.00;

c) Geneve represented by respondent Senen Arabaca for the supply of 41 units of PRB with a total contract price of ₱47,765,000.00; and

d) Bay Industrial represented by respondent Alex Tayao for the supply of 10 units of PRB with a total contract price of ₱11,650,000.00.

All supply contracts were approved by respondent Verzosa as PNP Chief.

x x x x x x x x x

PRBs delivered by Geneve

Geneve delivered 41 units of PRB to the PNP on 29 December 2009. It, however, partially delivered PRB accessories on 29 March 2010, and the rest on 6 April 2010.

The PNP Directorate for Comptrollership (DC) which conducted an inspection on 19 January 2010 of the delivered items from Geneve stated in its Inspection Report prepared on even date that the PRBs were found to be in good order/condition and in accordance/conforming to the approved NAPOLCOM specifications. The Inspection Report was signed by Avensuel G. Dy.

Also on 19 January 2010, the PNP Directorate for Research and Development (DRD) conducted an ocular inspection of the units delivered and issued Weapons Transportation and Communication Division (WTCD) Report No. T2010-02-A dated 21 January 2010 x x x which indicated that the delivered items conformed to the NAPOLCOM-approved specifications for PRBs x x x. The WTCD Report was recommended for approval by respondent Joel Crisostomo L. Garcia, which recommendation was concurred in by respondent Luis L. Saligumba, and approved by respondent Belarmino, Jr. as Director of the DRD.

In its Resolution No. 2010-09 dated 15 February 2010, the Inspection and Acceptance Committee (IAC) composed of respondents George Q. Piano as Chairman, Luis L. Saligumba, Job Nolan D. Antonio, and Edgar B. Paatan, as members, accepted the 41 units of PRB delivered by Geneve.

Disbursement Voucher (DV) No. O(M)-281209-029 dated 16 February 2010 was issued in the amount of ₱45,206,160.72 representing the payment of the 41 units of PRB delivered by Geneve. [The corresponding check] was received on 19 April 2010 by Geneve, represented by respondent Senen Arabaca as General Manager.

PRBs delivered by EnviroAire

EnviroAire delivered 24 units of PRB to the PNP x x x. The PNP DC inspected the units on 27 January 2010 and its Inspection Report Form stated that the rubber boats were found to be in good order/condition and in accordance/conforming to the approved NAPOLCOM specifications. The Inspection Report was signed by PO3 Avensuel G. Dy as Property Inspector.

The PNP DRD conducted an ocular inspection of the 24 units also on 27 January 2010 and issued WTCD Report No. T2010-04 dated 3 February 2010. The Report indicated that the delivered items conformed to the NAPOLCOM-approved specifications for PRBs. **The WTCD Report** x x x **was recommended for approval by respondent Garcia, concurred in by respondent Saligumba**, and approved by respondent Belarmino, Jr.

The IAC composed of respondents Piano as Chairman, Saligumba, Antonio, and Paatan, as members, accepted the 24 units of PRB delivered by EnviroAire by Resolution No. 2010-10 dated 15 February 2010.

DV No. O(M)-160210-036 dated 16 February 2010 covered the payment of ₱27,960,000.00 to EnviroAire for the 24 units of PRB. x x x A check for ₱27,960,000.00 dated 3 March 2010 was received on even date by respondent Harold Ong as representative and Vice President of EnviroAire.

PRBs delivered by Bay Industrial

Bay Industrial delivered ten units of PRB to the PNP x x x. The Inspection Report issued by the PNP DC stated that the goods were in good condition. The DRD, which conducted an ocular inspection of the units on 22 January 2020, concluded in WTCD Report No. T2010-03 dated February 2010 that the PRBs conformed to the NAPOLCOM-approved PNP specifications. The Report x x x was recommended for approval by respondent Garcia, concurred in by respondent Saligumba, and approved by respondent Belarmino, Jr. as the Director for Research and Development.

The IAC accepted the ten units of PRB in its Resolution No. 2010-11 dated 24 February 2010. The IAC Resolution was signed by respondents Saligumba, Antonio, and Paatan.

DV No. O(M)-150110-031 dated 15 April 2010 covering the payment of ₱11,025,892.87 to Bay Industrial was x x x approved by respondent Versosa. A check for the said amount dated 22 April 2010 was received by respondent Alex Tayao as representative and Vice President of Bay Industrial Philippines on even date.

OBMs delivered by EnviroAire

EnviroAire delivered to the PNP thirty sets of OBM on 29 December 2009 x x x; 50 sets on 11 February 2010 x x x; and ten sets on

2 March 2010 x x x. The DRD conducted an ocular and technical inspection of the OBMS on 5 March 2010 and subsequently issued WTCD Report Number T2010-07 dated 8 March 2010. The Report stated that all the OBMs conformed to the NAPOLCOM-approved specifications, with a notation that ten units with 40hp 'will be replaced with 60HP OBM upon arrival of the same from Singapore by early May 2010.' The WTCD Report x x x was recommended for approval by respondent Garcia, which recommendation was concurred in by respondent Saligumba, and approved by respondent Belarmino, Jr. as the DRD.

In Resolution No. 2010-18 dated 29 March 2010, the IAC resolved to accept the 93 OBMs delivered by EnviroAire. The IAC resolution was signed by respondents Alfredo Caballes, as Chairman of IAC, Saligumba, Antonio and Annalee R. Forro as Secretary.

DV No. O(M)-290310-052 dated 30 March 2010 covered the payment of P41,808,482.15 to EnviroAire for the 93 OBMs. x x x It was approved for payment by respondent Verzosa. Payment in the form of check was received by respondent Ong on 22 April 2010, as shown in box 'D' of the DV.

In sum, the PNP accepted the following items from the suppliers and paid them the following amounts:

Supplier	Item	Quantity	Date of Delivery	Amount
EnviroAire	Apex A-47A1 Rubber Boats	24	29 Dec 2009	₱27,960,000.00
	Mercury60HP Outboard Motor	93	29Dec 2009 11 Feb 2010 2 March 2010	₱44,175,000.00
Geneve	Zodiac FC 470 Rubber Boats	41	29Dec 2009 6 April 2010 (delivery of accessories	₱47,765,000.00
Bay	Lodestar HKS	10	4 January 2010	₱11,650,000.00
Industrial	480 Rubber Boats			

Upon receipt of the initial batch of PRBs and OBMs, the PNP MG, through its Technical Inspection Committee on Watercrafts (MG-TICW), conducted an inspection and sea trial of the PRBs and OBMs and discovered various deficiencies in these equipments, which make their use risky to end-users.

x x x x x x x x x

Acting on newspaper reports that the police rubber boats and outboard motors that were purchased by the PNP do not function when fitted together, the FFIB, OMB-MOLEO conducted an investigation on the aforesaid procurement by PNP:

> The investigation of the FFIB resulted in a Complaint for Gross Neglect of Duty and Gross Incompetence [against 21 officials and officers of the PNP, including respondent].

x x x x x x x x x

The OMB-MOLEO narrated [respondent's] defense in his Counter-Affidavit as follows:

> **S. Respondent Luis L. Saligumba**
>
> **Respondent Saligumba is being charged as member of the PNP IAC**. He vehemently denies the charges against him. He claims that the role of the IAC was to determine whether the deliveries were in conformity with the specifications in the Purchase Order, and not to conduct sea trial.
>
> He explains that upon the directive of the Chairman of the IAC, the DRD inspected the deliveries of the 75 PRBs and 93 OBMs and issued inspection reports, WTCD Report Nos. T2010-02A, T2010-03, T2010-04 and T2010-07. **Respondent Garcia, who led the inspection, reported that the PRB and OBM units were in conformity with the NAPOLCOM specifications**. Furthermore, respondent **Belarmino, Director of DRD, issued Memoranda dated 1, 10, and 12 February 2010 stating that the PRBs and OBMs were in conformity with the specifications of the NAPOLCOM**. Hence, he **(Saligumba) signed the IAC Resolutions based on the reports of the inspection team and the memoranda of respondent Belarmino which all appeared to be regular**.
>
> Respondent avers that he did not personally inspect the items delivered since a group of experts and selected personnel

knowledgeable of rubber boats had conducted the inspection for him.

Resolving the issue of "Whether or Not There Exists Substantial Evidence For Grave Misconduct, Gross Neglect of Duty and/or Gross Incompetence Against Members of the IAC for Alleged Failure to Properly Inspect the Deliveries Consistent With the Interest of the Government", the OMB-MOLEO held:

Re: Liability of the *Inspection and Acceptance Committee*

The members of the IAC are being blamed for their: 1) failure to ensure that the deliveries are complete; 2) to ensure that the deliveries conform to the NAPOLCOM-approved specifications; and 3) failure to ascertain the functional compatibility of the PRBs and OBMs prior to acceptance. Members of the IAC counter that they merely relied on the WTCD reports issued by the DRD which stated that the delivered PRBs and OBMs conformed to the NAPOLCOM standard specifications.[3]

On January 9, 2013, the Office of the Ombudsman rendered a Decision finding the charged public officials and officers administratively liable, ranging from simple neglect of duty to grave misconduct. As regards respondent, the Ombudsman found him guilty of simple neglect of duty and imposed the penalty of suspension from service for a period of six (6) months. The dispositive portion of the said decision partly reads:

WHEREFORE, this Office finds:

x x x x x x x x x

2) **GEORGE Q. PIANO, LUIS L. SALIGUMBA, JOB NOLAN D. ANTONIO,** and **EDGAR B. PAATAN**, all members of the Inspection and Acceptance Committee, liable for **SIMPLE NEGLECT OF DUTY**, and are hereby meted the penalty of **SUSPENSION FROM THE SERVICE for a period of SIX MONTHS WITHOUT PAY.** If the penalty of suspension can no longer be served by reason of retirement or resignation, the alternative penalty of fine equivalent to their respective salaries for six (6) months shall be imposed.[4]

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[3] *Id*. at 16-25, 27, 32-33.

[4] *Id*. at 222-223.

In holding respondent administratively liable for simple neglect of duty, the Ombudsman ruled that while persons other than those formally appointed as inspectors may be authorized to conduct the inspection, the members of the IAC are still expected to exercise due diligence in seeing to it that the policies or guidelines for inspection are dutifully observed, which they failed to do so.

The WTCD reports, per the Ombudsman, relied upon by IAC members and prepared by the actual inspectors, contained remarks that the PRBs delivered lacked some accessories. The WTCD reports also provided information showing non-compliance with the NAPOLCOM standard specifications. Thus, the IAC members should have not accepted the deliveries of the PRBs.

Too, the 93 units of OBMs delivered by EnviroAire should not have also been accepted. The WTCG report pertaining to the delivered OBMs stated that ten (10) units of 40HP OBM would still have to be replaced by the supplier by early May 2010. As there was no proper compliance with what was required in the Supply Contract, the delivery of 93 units of OBMs by EnviroAire should not have been accepted.

In its Order dated June 24, 2013, the Ombudsman denied respondent's motion for reconsideration.

On December 23, 2014, the CA set aside the Decision of the Ombudsman, the *fallo* of which reads:

> WHEREFORE, the petition is GRANTED. The assailed decision dated January 9, 2013 finding [respondent] guilty of simple neglect of duty and penalizing him with six months suspension without pay, as well as the Order dated June 24, 2013 denying [respondent's] motion for reconsideration are SET ASIDE.
>
> SO ORDERED.[5]

The Ombudsman moved for, but was denied, reconsideration via Resolution dated March 21, 2016.

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[5] *Id.* at 108.

Hence, this petition for review on the sole issue of whether the CA erred in setting aside the Decision of the Office of the Ombudsman.

The petition is meritorious.

In its assailed decision, the CA justified its reversal of the Ombudsman's Decision in the following manner, to wit:

> The Court finds it strange that while respondent Joel Crisostomo L. Garcia who "recommended for approval" the WTCD reports was merely suspended for one (1) month, [respondent] Saligumba, who relied on said report and merely affixed his concurring signatures thereon, was penalized with six (6) months suspension. Public respondent OMB-MOLEO may have been correct in imposing upon Joel Crisostomo L. Garcia the penalty of "one (1) month" suspension without pay for his act of recommending the approval of the WTCD report. But such should have been considered, at worst, as the yardstick in penalizing petitioner for the lighter role he played in merely concurring on what Garcia recommended. That such was ignored, this Court already finds it imperative to set aside the assailed decision and order. Clearly, the [respondent] was denied his right to equal protection of the law.
>
> What is more, the assailed decision found substantial evidence to dismiss Henry Duque ([respondent's] co-respondent below) for the Grave Misconduct and Gross Neglect he committed, viz:
>
> > g. Henry Duque issued a false Certificate of Widest Dissemination dated December 18, 2009 reading: 'THIS IS TO CERTIFY that the Invitation to Apply for Eligibility and to Bid was published in newspaper on May 12, 2009 on the bidding of 24 units of PRBs w/o Engine conducted on September 9, 2009 at the PNP Ante Room and it was also posted at the PHILGEPS and in conspicuous places with Camp Crame in compliance with RA 9184.
> >
> > h. There exists substantial evidence to hold the named officials in the Supplemental Complaint, together with the respondents enumerated in the Complaint dated 15 November 2011, liable for Grave Misconduct and Gross Neglect of Duty.
>
> Yet, the charges against HENRY Y. DUQUE were DISMISSED for lack of sufficient evidence. With such second instance of denial

of his constitutional right to equal protection of the laws, [respondent] evidently deserves an absolution of the charge of simple neglect of duty. [His] constitutional right to equal protection of the laws as mandated by the Bill of Rights in Our Constitution compels Us to nullify the assailed decision and order.

But even if Garcia and Duque were meted six months suspension without pay and thus would divest Us of that compelling ground to apply the equal protection of the laws as above-discussed, still, it behooves Us to absolve [respondent] from the charge of Simple Neglect of Duty as on record is the undisputed argument of Ferdinand P. Yuzon, Pedro P. Cabatingan, Jr., Rico P. Payonga, Jessie Jerry R. Taduran and Nelson F. Ferrer and Marvin G. Reyes, that:

> Respondents who are impleaded in the Supplemental Complaint in their capacity as Chairman, Vice-Chairman, and Members, respectively, of the MG-TWG, deny the charges against them and refute the allegations that the MG-TWG conceived technical specifications that brought about incompatible PRBs and OBMs.
>
> They allege that their task in the MG-TWG was to help in the determination of the watercraft that would be best suited for maritime law enforcement and maritime security mandates of the MG in line with its Equipment Modernization Program. x x x They had dutifully given their best in determining the technical specifications for the watercraft that is best suited for law enforcement functions of the PNP-MG and that they had made the most appropriate recommendation. The technical specifications, by themselves, did not cause the alleged functional incompatibility of the PRBs and the OBMs. The functional incompatibility could be traced to the breaches in the procurement procedures and lapses in the performance of assigned duties during the procurement process, negotiation and acceptance. A PRB with a capacity of 12 persons is not per se incompatible with an OBM of 40HP (minimum) which may also be 50HP, 60HP or 80HP. What was of extreme importance was that both PRB and OBM were purchased as one lot and not separately, as required by NAPOLCOM Resolution No. 2009-223 and UESB Resolution No. 2008-34. The PRBs and OBMs should have been procured from a single supplier to ensure functional compatibility. The alleged functional incompatibility of the PRBs and OBMs was caused by the failure to follow the additional

> requirement of the UESB and NAPOLCOM Resolutions that the equipment must pass test and evaluation. Even the MG-TICW technical inspection and sea trial of PRBs and OBMs several months after acceptance did not find fault in the technical specifications.
>
> If such explanation merited public respondent's dismissal of the charges against them, We see no reason why [respondent] may be held liable for the lesser offense of simple neglect over something that was beyond his scope of work.[6]

We disagree with the CA that respondent is not guilty of simple neglect of duty.

An examination of the records persuasively shows that the Office of the Ombudsman correctly held respondent guilty of simple neglect of duty.

The complaint charges respondent, as member of the IAC, together with other public individuals, with Gross Neglect of Duty and Gross Incompetence resulting from various irregularities in the procurement of PRBs and OBMs to be used by the PNP Maritime Group.

Under the PNP Procurement Manual, Series of 1997, the IAC is tasked to:

a. Inspect deliveries in accordance with the terms and conditions of procurement documents;

b. Accept or reject the deliveries; and

c. Render Inspection and Acceptance Report to the Head of Procuring Agency.

In this case, respondent evidently neglected to efficiently and effectively discharge his functions and responsibilities. In his Counter-Affidavit, he even admitted that he did not personally inspect the deliveries since a group of experts and selected personnel knowledgeable of rubber boats had conducted the inspection for him.[7]

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[6] *Id.* at 42-44.

[7] *Id*. at 96.

While they are not mandated to exclusively inspect the items delivered, respondent and other IAC members should not have merely relied on the reports and instead confirmed such findings by personally inspecting the deliveries, especially since there were noted discrepancies from the report. Prudence dictates that respondent should have brought it upon himself to personally check the said items. He cannot justify his acceptance of the deliveries when the very WTCD reports IAC members relied upon already show deviations of the NAPOLCOM specifications, as follows:

The WTCD reports relied upon by respondent IAC members which were prepared by the actual inspectors contained remarks that the PRBs delivered lacked some accessories. The WTCD reports also provided information showing non-compliance with the NAPOLCOM standard specifications. Pertinent portions of the WTCD reports are reproduced in the following tables:

The report on the visual inspection of 10 units of PRBs delivered by Bay Industrial:

Specifications for Police Rubber Boat (NAPOLCOM) Resolution No. 2009-223	Specifications of Lodestar HKS 480 Rubber Boat without OBM	Remark(s)
Color: Black or white with appropriate PNP markings (NAPOLCOM Res. No. 99-002)	Black	To be marked with PNP markings
Navigational Equipment: GPS (hand-held, water-resistant)	To be provided	Mandatory Requirement
Standard Equipment: Trailer with reflector and nylon ropes	To be provided	Mandatory Requirement
Aluminum roll-up floor boards/duck boards or better	Anti-skid floor board (anodized aluminum)	Equivalent

Aluminum shaft T-paddles, 4 pcs (minimum)	Aluminum shaft T-paddles, 2 pcs	Additional paddles will be provided
Foot pump with hose (compatible)	Double action hand pump	Better
Extra fuel tank, 25-lite capacity	N/A (not provided)	Rubber boat only, as per negotiation
Two (2) units rubber fenders, 5-inch diameter (minimum)	To be provided	Mandatory Requirement
Working Float vest, 10 pcs or more **Warranty:** Three (3) years complete maintenance services (Integrated Logistics Support) and support(spare parts and lubricants)	To be provided The company provided a warranty of one (1) year for the boat	Mandatory Requirement As per negotiation, the proponent offered one (1) year warranty, as stated in the contract
Other Requirements: a. Training package for 2 personnel per unit	The company will provide a 1-day seminar on proper care and maintenance of the rubber boats	Mandatory Requirement

The report on the visual inspection of 24 units of PRBs delivered by EnviroAire:

Specifications for Police Rubber Boat (NAPOLCOM Resolution No. 2009-223)	Apex A-47 AI Rubber Boat without OBM	Remark(s)
Color: Black or white with appropriate PNP markings (NAPOLCOM Res. No.)	Black	To be marked with PNP markings

Working float vest, 10 pcs or more	To be provided	Mandatory Requirement
Other Requirements:		
b. Training package for 2 personnel per unit	The company will provide 6-day seminar on proper care and maintenance of the rubber boats (On-going)	Mandatory Requirement

The report on the visual inspection of 41 units of PRBs delivered by Geneve:

Specifications for Police Rubber Boat (NAPOLCOM Resolution No. 2009-223)	Specifications of Zodiac FC 470 Futura Commando Rubber Boat without OBM	Remark(s)
Color: Black or white with appropriate PNP markings (NAPOLCOM Res. No. 99-002)	Black	To be marked with PNP markings
Navigational Equipment: GPS (hand-held, water-resistant	To be provided, and one (1) GPS per boat	Mandatory Requirement
Standard Equipment: Trailer with reflector and nylon ropes	To be provided each rubber boat	Mandatory Requirement
Canvass boat cover	To be provided for each rubber boat	Mandatory Requirement
Additional Equipment: Extra fuel tank, 25-liter capacity	N/A (not provided)	Rubber boat only, as per negotiation
Two (2) units rubber fenders, 5-inch diameter (minimum)	To be provided	Mandatory Requirement

Two (2) units flexible small life rings with rope, 10 meters	To be provided	Mandatory Requirement
Mooring/towing rope, ¾-inch diameter, 50 meters long	To be provided	Mandatory Requirement
Maintenance Warranty: Three (3) years complete maintenance services (Integrated Logistics Support) and support (spare parts and lubricants	The company provided a warranty of one (1) year for the boat	As per negotiation, the proponent offered one (1) year warranty, as stated in the contract.
Other Requirements: c. Training package for 2 personnel per unit	The company will provide 2-day seminar on proper care and maintenance of the rubber boats (On-going)	Mandatory Requirement[8]

Clearly, the tables above show incomplete deliveries and deviations from the NAPOLCOM-approved specifications, which make respondent and other IAC members liable for simple neglect of duty.

Simple neglect of duty means the failure of an employee or official to give proper attention to a task expected of him or her, signifying a "disregard of a duty resulting from carelessness or indifference."[9] Respondent and other members of the IAC fell short of the reasonable diligence required of them, for failing to perform the task of inspecting the deliveries in accordance with the conditions of the procurement documents and rejecting said deliveries in case of deviation.

Simple neglect of duty is classified as a less grave offense punishable by suspension without pay for one month and one

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[8] *Id*. at 34-37.

[9] *Republic v. Canastillo*, G.R. No. 172729, June 8, 2007, 524 SCRA 546, 555.

day to six months.[10] Thus the imposition of the penalty of six months suspension by the Ombudsman is proper.

WHEREFORE, the petition is **GRANTED**. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 130930 are **REVERSED** and **SET ASIDE**. The Decision of the Ombudsman dated January 9, 2013 is hereby **REINSTATED**.

SO ORDERED.

Peralta,[*] *Bersamin, Reyes,* and *Caguioa,*[**] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 190702. February 27, 2017]

JAIME T. GAISANO, *petitioner, vs.* **DEVELOPMENT INSURANCE AND SURETY CORPORATION,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; INSURANCE LAW; INSURANCE CODE; INSURANCE CONTRACT; NOT VALID AND BINDING UNLESS THE PREMIUM IS PAID.— Insurance is a contract whereby one undertakes for a consideration to indemnify another against loss, damage or liability arising from

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[10] Sec. 22, Rule XIV of the Omnibus Civil Service Rules and Regulations. See *Civil Service Commission v. Rabang*, G.R. No. 167763, March 14, 2008, 548 SCRA 541.

[*] Designated additional Member per Raffle dated February 22, 2017; Jardeleza, *J.*, no part, due to his prior action as Solicitor General.

[**] Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

an unknown or contingent event. Just like any other contract, it requires a cause or consideration. The consideration is the premium, which must be paid at the time and in the way and manner specified in the policy. If not so paid, the policy will lapse and be forfeited by its own terms. The law, however, limits the parties' autonomy as to when payment of premium may be made for the contract to take effect. The general rule in insurance laws is that unless the premium is paid, the insurance policy is not valid and binding. x x x In *Tibay v. Court of Appeals*, we emphasized the importance of this rule. We explained that in an insurance contract, both the insured and insurer undertake risks. On one hand, there is the insured, a member of a group exposed to a particular peril, who contributes premiums under the risk of receiving nothing in return in case the contingency does not happen; on the other, there is the insurer, who undertakes to pay the entire sum agreed upon in case the contingency happens. This risk-distributing mechanism operates under a system where, by prompt payment of the premiums, the insurer is able to meet its legal obligation to maintain a legal reserve fund needed to meet its contingent obligations to the public. The premium, therefore, is the *elixir vitae* or source of life of the insurance business x x x.

2. ID.; ID.; ID.; ID.; ID.; EXCEPTIONS.— There are, of course, exceptions to the rule that no insurance contract takes effect unless premium is paid. x x x In *UCPB General Insurance Co., Inc.*, we summarized the exceptions as follows: (1) in case of life or industrial life policy, whenever the grace period provision applies, as expressly provided by Section 77 itself; (2) where the insurer acknowledged in the policy or contract of insurance itself the receipt of premium, even if premium has not been actually paid, as expressly provided by Section 78 itself; (3) where the parties agreed that premium payment shall be in installments and partial payment has been made at the time of loss, as held in *Makati Tuscany Condominium Corp. v. Court of Appeals*; (4) where the insurer granted the insured a credit term for the payment of the premium, and loss occurs before the expiration of the term, as held in *Makati Tuscany Condominium Corp.*; and (5) where the insurer is in estoppel as when it has consistently granted a 60 to 90-day credit term for the payment of premiums**.**

3. CIVIL LAW; CIVIL CODE; HUMAN RELATIONS; UNJUST ENRICHMENT; EXISTS WHEN A PERSON UNJUSTLY RETAINS A BENEFIT TO THE LOSS OF ANOTHER, OR

WHEN A PERSON RETAINS MONEY OR PROPERTY OF ANOTHER AGAINST THE FUNDAMENTAL PRINCIPLES OF JUSTICE, EQUITY AND GOOD CONSCIENCE.— [W]e find that petitioner is not entitled to the insurance proceeds because no insurance policy became effective for lack of premium payment. The consequence of this declaration is that petitioner is entitled to a return of the premium paid for the vehicle in the amount of ₱55,620.60 under the principle of unjust enrichment. There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience.

APPEARANCES OF COUNSEL

Madayag Cañeda Ruenata & Associates and *Juan Emmanuel M. Reyes* for petitioner.

Bartolome G. Viola, Jr. for respondent.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] seeking to nullify the Court of Appeals' (CA) September 11, 2009 Decision[2] and November 24, 2009 Resolution[3] in CA-G.R. CV No. 81225. The CA reversed the September 24, 2003 Decision[4] of the Regional Trial Court (RTC) in Civil Case No. 97-85464. The RTC granted Jaime T. Gaisano's (petitioner) claim on the proceeds of the comprehensive commercial vehicle policy issued by Development Insurance and Surety Corporation (respondent), *viz.*:

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[1] *Rollo*, pp. 10-35.

[2] *Id.* at 37-44; penned by Associate Justice Mario L. Guariña III, and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Jane Aurora C. Lantion.

[3] *Id.* at 36.

[4] CA *rollo*, pp. 32-36.

IN VIEW OF THE FOREGOING, the decision appealed from is reversed, and the defendant-appellant ordered to pay the plaintiff-appellee the sum of ₱55,620.60 with interest at 6 percent per annum from the date of the denial of the claim on October 9, 1996 until payment.

SO ORDERED.[5]

I

The facts are undisputed. Petitioner was the registered owner of a 1992 Mitsubishi Montero with plate number GTJ-777 (vehicle), while respondent is a domestic corporation engaged in the insurance business.[6] On September 27, 1996, respondent issued a comprehensive commercial vehicle policy[7] to petitioner in the amount of ₱1,500,000.00 over the vehicle for a period of one year commencing on September 27, 1996 up to September 27, 1997.[8] Respondent also issued two other commercial vehicle policies to petitioner covering two other motor vehicles for the same period.[9]

To collect the premiums and other charges on the policies, respondent's agent, Trans-Pacific Underwriters Agency (Trans-Pacific), issued a statement of account to petitioner's company, Noah's Ark Merchandising (Noah's Ark).[10] Noah's Ark immediately processed the payments and issued a Far East Bank check dated September 27, 1996 payable to Trans-Pacific on the same day.[11] The check bearing the amount of ₱140,893.50 represents payment for the three insurance policies, with ₱55,620.60 for the premium and other charges over the vehicle.[12] However, nobody from Trans-Pacific picked up the check that

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[5] *Rollo*, pp. 43-44.

[6] CA *rollo*, p. 32.

[7] *Rollo*, pp. 46-47.

[8] *Id*. at 38.

[9] CA *rollo*, p. 32.

[10] *Rollo*, p. 52.

[11] *Id*. at 38; 48.

[12] *Id*. at 39; 48.

day (September 27) because its president and general manager, Rolando Herradura, was celebrating his birthday. Trans-Pacific informed Noah's Ark that its messenger would get the check the next day, September 28.[13]

In the evening of September 27, 1996, while under the official custody of Noah's Ark marketing manager Achilles Pacquing (Pacquing) as a service company vehicle, the vehicle was stolen in the vicinity of SM Megamall at Ortigas, Mandaluyong City. Pacquing reported the loss to the Philippine National Police Traffic Management Command at Camp Crame in Quezon City.[14] Despite search and retrieval efforts, the vehicle was not recovered.[15]

Oblivious of the incident, Trans-Pacific picked up the check the next day, September 28. It issued an official receipt numbered 124713 dated September 28, 1996, acknowledging the receipt of ₱55,620.60 for the premium and other charges over the vehicle.[16] The check issued to Trans-Pacific for ₱140,893.50 was deposited with Metrobank for encashment on October 1, 1996.[17]

On October 1, 1996, Pacquing informed petitioner of the vehicle's loss. Thereafter, petitioner reported the loss and filed a claim with respondent for the insurance proceeds of ₱1,500,000.00.[18] After investigation, respondent denied petitioner's claim on the ground that there was no insurance contract.[19] Petitioner, through counsel, sent a final demand on July 7, 1997.[20] Respondent, however, refused to pay the insurance proceeds or return the premium paid on the vehicle.

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[13] *Id.* at 38-39; TSN, September 10, 1998, p. 17.

[14] *Rollo*, pp. 38-39.

[15] *Id.* at 54.

[16] *Id.* at 53.

[17] *Id.* at 39.

[18] *Id.* at 15.

[19] *Id.* at 39-40.

[20] *Id.* at 59.

On October 9, 1997, petitioner filed a complaint for collection of sum of money and damages[21] with the RTC where it sought to collect the insurance proceeds from respondent. In its Answer,[22] respondent asserted that the non-payment of the premium rendered the policy ineffective. The premium was received by the respondent only on October 2, 1996, and there was no known loss covered by the policy to which the payment could be applied.[23]

In its Decision[24] dated September 24, 2003, the RTC ruled in favor of petitioner. It considered the premium paid as of September 27, even if the check was received only on September 28 because (1) respondent's agent, Trans-Pacific, acknowledged payment of the premium on that date, September 27, and (2) the check that petitioner issued was honored by respondent in acknowledgment of the authority of the agent to receive it.[25] Instead of returning the premium, respondent sent a checklist of requirements to petitioner and assigned an underwriter to investigate the claim.[26] The RTC ruled that it would be unjust and inequitable not to allow a recovery on the policy while allowing respondent to retain the premium paid.[27] Thus, petitioner was awarded an indemnity of ₱1,500,000.00 and attorney's fees of ₱50,000.00.[28]

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[21] Docketed as Civil Case No. 97-85464; RTC records, pp.1-4.

[22] *Id*. at 14-19.

[23] *Rollo*, p. 40.

[24] *Supra* note 4.

[25] CA *rollo*, pp. 34-35.

[26] *Id*. at 35-36.

[27] *Id*. at 36.

[28] *Id*. The dispositive portion reads:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered in favor of the plaintiff and against the defendant. Defendant is hereby ordered to pay plaintiff the following:

a) ₱1,500,000.00 as indemnification for the loss of the subject vehicle under the insurance policy;

After respondent's motion for reconsideration was denied,[29] it filed a Notice of Appeal.[30] Records were forwarded to the CA.[31]

The CA granted respondent's appeal.[32] The CA upheld respondent's position that an insurance contract becomes valid and binding only after the premium is paid pursuant to Section 77 of the Insurance Code (Presidential Decree No. 612, as amended by Republic Act No. 10607).[33] It found that the premium was not yet paid at the time of the loss on September 27, but only a day after or on September 28, 1996, when the check was picked up by Trans-Pacific.[34] It also found that none of the exceptions to Section 77 obtains in this case.[35] Nevertheless, the CA ordered respondent to return the premium it received in the amount of ₱55,620.60, with interest at the rate of 6% *per annum* from the date of the denial of the claim on October 9, 1996 until payment.[36]

Hence petitioner filed this petition. He argues that there was a valid and binding insurance contract between him and respondent.[37] He submits that it comes within the exceptions to the rule in Section 77 of the Insurance Code that no contract of insurance becomes binding unless and until the premium thereof has been paid. The prohibitive tenor of Section 77 does not apply because the parties stipulated for the payment of

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b) ₱50,000.00 as attorney's fees.

No pronouncement as to costs.

SO ORDERED.

[29] CA *rollo*, p. 37.

[30] *Id*. at 13-14.

[31] *Id*. at 3; 15.

[32] *Supra* note 2.

[33] *Rollo*, p. 41.

[34] *Id*. at 42-43.

[35] *Id*. at 41-42.

[36] *Id*. at 43.

[37] *Id*. at 18.

premiums.[38] The parties intended the contract of insurance to be immediately effective upon issuance, despite non-payment of the premium, because respondent trusted petitioner.[39] He adds that respondent waived its right to a pre-payment in full of the terms of the policy, and is in estoppel.[40]

Petitioner also argues that assuming he is not entitled to recover insurance proceeds, but only to the return of the premiums paid, then he should be able to recover the full amount of ₱140,893.50, and not merely ₱55,620.60.[41] The insurance policy covered three vehicles yet respondent's intention was merely to disregard the contract for only the lost vehicle.[42] According to petitioner, the principle of mutuality of contracts is violated, at his expense, if respondent is allowed to be excused from performance on the insurance contract only for one vehicle, but not as to the two others, just because no loss is suffered as to the two. To allow this "would be to place exclusively in the hands of one of the contracting parties the right to decide whether the contract should stand or not x x x."[43]

For failure of respondent to file its comment to the petition, we declared respondent to have waived its right to file a comment in our June 15, 2011 Resolution.[44]

The lone issue here is whether there is a binding insurance contract between petitioner and respondent.

II

We deny the petition.

Insurance is a contract whereby one undertakes for a consideration to indemnify another against loss, damage or

[38] *Id.* at 20.

[39] *Id*. at 21.

[40] *Id*. at 22.

[41] *Id*. at 31.

[42] *Id.*

[43] *Id*. at 32.

[44] *Id*. at 83-84.

liability arising from an unknown or contingent event.[45] Just like any other contract, it requires a cause or consideration. The consideration is the premium, which must be paid at the time and in the way and manner specified in the policy.[46] If not so paid, the policy will lapse and be forfeited by its own terms.[47]

The law, however, limits the parties' autonomy as to when payment of premium may be made for the contract to take effect. The general rule in insurance laws is that unless the premium is paid, the insurance policy is not valid and binding.[48] Section 77 of the Insurance Code, applicable at the time of the issuance of the policy, provides:

> Sec. 77. An insurer is entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against. Notwithstanding any agreement to the contrary, no policy or contract of insurance issued by an insurance company is valid and binding unless and until the premium thereof has been paid, except in the case of a life or an industrial life policy whenever the grace period provision applies.

In *Tibay v. Court of Appeals*,[49] we emphasized the importance of this rule. We explained that in an insurance contract, both the insured and insurer undertake risks. On one hand, there is the insured, a member of a group exposed to a particular peril, who contributes premiums under the risk of receiving nothing in return in case the contingency does not happen; on the other, there is the insurer, who undertakes to pay the entire sum agreed upon in case the contingency happens. This risk-distributing mechanism operates under a system where, by prompt payment of the premiums, the insurer is able to meet its legal obligation

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[45] INSURANCE CODE, Sec. 2(1).

[46] *Philippine Phoenix Surety & Insurance Company v. Woodworks, Inc.*, G.R. No. L-25317, August 6, 1979, 92 SCRA 419, 422.

[47] *Id.*

[48] *American Home Assurance Company v. Chua*, G.R. No. 130421, June 28, 1999, 309 SCRA 250, 259.

[49] G.R. No. 119655, May 24, 1996, 257 SCRA 126.

to maintain a legal reserve fund needed to meet its contingent obligations to the public. The premium, therefore, is the *elixir vitae* or source of life of the insurance business:

> In the desire to safeguard the interest of the assured, it must not be ignored that the contract of insurance is primarily a risk-distributing device, a mechanism by which all members of a group exposed to a particular risk contribute premiums to an insurer. From these contributory funds are paid whatever losses occur due to exposure to the peril insured against. Each party therefore takes a risk: the insurer, that of being compelled upon the happening of the contingency to pay the entire sum agreed upon, and the insured, that of parting with the amount required as premium, without receiving anything therefor in case the contingency does not happen. To ensure payment for these losses, the law mandates all insurance companies to maintain a legal reserve fund in favor of those claiming under their policies. It should be understood that the integrity of this fund cannot be secured and maintained if by judicial fiat partial offerings of premiums were to be construed as a legal *nexus* between the applicant and the insurer despite an express agreement to the contrary. For what could prevent the insurance applicant from deliberately or willfully holding back full premium payment and wait for the risk insured against to transpire and then conveniently pass on the balance of the premium to be deducted from the proceeds of the insurance? x x x
>
> x x x x x x x x x
>
> And so it must be. For it cannot be disputed that premium is the *elixir vitae* of the insurance business because by law the insurer must maintain a legal reserve fund to meet its contingent obligations to the public, hence, the imperative need for its prompt payment and full satisfaction. It must be emphasized here that all actuarial calculations and various tabulations of probabilities of losses under the risks insured against are based on the sound hypothesis of prompt payment of premiums. Upon this bedrock insurance firms are enabled to offer the assurance of security to the public at favorable rates. x x x[50] (Citations omitted.)

Here, there is no dispute that the check was delivered to and was accepted by respondent's agent, Trans-Pacific, only on September 28, 1996. No payment of premium had thus been

[50] *Id*. at 140-141.

made at the time of the loss of the vehicle on September 27, 1996. While petitioner claims that Trans-Pacific was informed that the check was ready for pick-up on September 27, 1996, the notice of the availability of the check, by itself, does not produce the effect of payment of the premium. Trans-Pacific could not be considered in delay in accepting the check because when it informed petitioner that it will only be able to pick-up the check the next day, petitioner did not protest to this, but instead allowed Trans-Pacific to do so. Thus, at the time of loss, there was no payment of premium yet to make the insurance policy effective.

There are, of course, exceptions to the rule that no insurance contract takes effect unless premium is paid. In *UCPB General Insurance Co., Inc. v. Masagana Telamart, Inc.*,[51] we said:

> It can be seen at once that Section 77 does not restate the portion of Section 72 expressly permitting an agreement to extend the period to pay the premium. But are there exceptions to Section 77?
>
> The answer is in the affirmative.
>
> The first exception is provided by Section 77 itself, and that is, in case of a life or industrial life policy whenever the grace period provision applies.
>
> The second is that covered by Section 78 of the Insurance Code, which provides:
>
> > SEC. 78. Any acknowledgment in a policy or contract of insurance of the receipt of premium is conclusive evidence of its payment, so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until premium is actually paid.
>
> A third exception was laid down in *Makati Tuscany Condominium Corporation vs. Court of Appeals*, wherein we ruled that Section 77 may not apply if the parties have agreed to the payment in installments of the premium and partial payment has been made at the time of loss. We said therein, thus:
>
> > We hold that the subject policies are valid even if the premiums were paid on installments. The records clearly show that the

[51] G.R. No. 137172, April 4, 2001, 356 SCRA 307.

> petitioners and private respondent intended subject insurance policies to be binding and effective notwithstanding the staggered payment of the premiums. The initial insurance contract entered into in 1982 was renewed in 1983, then in 1984. In those three years, the insurer accepted all the installment payments. Such acceptance of payments speaks loudly of the insurer's intention to honor the policies it issued to petitioner. Certainly, basic principles of equity and fairness would not allow the insurer to continue collecting and accepting the premiums, although paid on installments, and later deny liability on the lame excuse that the premiums were not prepaid in full.

Not only that. In *Tuscany*, we also quoted with approval the following pronouncement of the Court of Appeals in its Resolution denying the motion for reconsideration of its decision:

> While the import of Section 77 is that prepayment of premiums is strictly required as a condition to the validity of the contract, We are not prepared to rule that the request to make installment payments duly approved by the insurer would prevent the entire contract of insurance from going into effect despite payment and acceptance of the initial premium or first installment. Section 78 of the Insurance Code in effect allows waiver by the insurer of the condition of prepayment by making an acknowledgment in the insurance policy of receipt of premium as conclusive evidence of payment so far as to make the policy binding despite the fact that premium is actually unpaid. Section 77 merely precludes the parties from stipulating that the policy is valid even if premiums are not paid, but does not expressly prohibit an agreement granting credit extension, and such an agreement is not contrary to morals, good customs, public order or public policy (De Leon, The Insurance Code, p. 175). So is an understanding to allow insured to pay premiums in installments not so prescribed. At the very least, both parties should be deemed in estoppel to question the arrangement they have voluntarily accepted.

By the approval of the aforequoted findings and conclusion of the Court of Appeals, *Tuscany* has provided a fourth exception to Section 77, namely, that the insurer may grant credit extension for the payment of the premium. This simply means that if the insurer has granted the insured a credit term for the payment of the premium and loss occurs before the expiration of the term, recovery on the policy should be allowed even though the premium is paid after the loss but within the credit term.

x x x x x x x x x

Finally in the instant case, it would be unjust and inequitable if recovery on the policy would not be permitted against Petitioner, which had consistently granted a 60- to 90-day credit term for the payment of premiums despite its full awareness of Section 77. Estoppel bars it from taking refuge under said Section, since Respondent relied in good faith on such practice. Estoppel then is the fifth exception to Section 77.[52] (Citations omitted.)

In *UCPB General Insurance Co., Inc.*, we summarized the exceptions as follows: (1) in case of life or industrial life policy, whenever the grace period provision applies, as expressly provided by Section 77 itself; (2) where the insurer acknowledged in the policy or contract of insurance itself the receipt of premium, even if premium has not been actually paid, as expressly provided by Section 78 itself; (3) where the parties agreed that premium payment shall be in installments and partial payment has been made at the time of loss, as held in *Makati Tuscany Condominium Corp. v. Court of Appeals*;[53] (4) where the insurer granted the insured a credit term for the payment of the premium, and loss occurs before the expiration of the term, as held in *Makati Tuscany Condominium Corp.*; and (5) where the insurer is in *estoppel* as when it has consistently granted a 60 to 90-day credit term for the payment of premiums.

The insurance policy in question does not fall under the first to third exceptions laid out in *UCPB General Insurance Co., Inc.*: (1) the policy is not a life or industrial life policy; (2) the policy does not contain an acknowledgment of the receipt of premium but merely a statement of account on its face;[54] and (3) no payment of an installment was made at the time of loss on September 27.

Petitioner argues that his case falls under the fourth and fifth exceptions because the parties intended the contract of insurance to be immediately effective upon issuance, despite non-payment

[52] *Id.* at 316-318.

[53] G.R. No. 95546, November 6, 1992, 215 SCRA 462.

[54] *Rollo*, p. 46.

of the premium. This waiver to a pre-payment in full of the premium places respondent in *estoppel.*

We do not agree with petitioner.

The fourth and fifth exceptions to Section 77 operate under the facts obtaining in *Makati Tuscany Condominium Corp.* and *UCPB General Insurance Co., Inc*. Both contemplate situations where the insurers have consistently granted the insured a credit extension or term for the payment of the premium. Here, however, petitioner failed to establish the fact of a grant by respondent of a credit term in his favor, or that the grant has been consistent. While there was mention of a credit agreement between Trans-Pacific and respondent, such arrangement was not proven and was internal between agent and principal.[55] Under the principle of relativity of contracts, contracts bind the parties who entered into it. It cannot favor or prejudice a third person, even if he is aware of the contract and has acted with knowledge.[56]

We cannot sustain petitioner's claim that the parties agreed that the insurance contract is immediately effective upon issuance despite non-payment of the premiums. Even if there is a waiver of pre-payment of premiums, that in itself does not become an exception to Section 77, unless the insured clearly gave a credit term or extension. This is the clear import of the fourth exception in the *UCPB General Insurance Co., Inc.* To rule otherwise would render nugatory the requirement in Section 77 that "[n]otwithstanding any agreement to the contrary, no policy or contract of insurance issued by an insurance company is valid and binding unless and until the premium thereof has been paid, x x x." Moreover, the policy itself states:

> WHEREAS THE INSURED, by his corresponding proposal and declaration, and which shall be the basis of this Contract and deemed incorporated herein, has applied to the company for the insurance hereinafter contained, *subject to the payment of the Premium as consideration for such insurance*.[57] (Emphasis supplied.)

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[55] *Id.* at 42.

[56] See *Borromeo v. Court of Appeals*, G.R. No. 169846, March 28, 2008, 550 SCRA 269, 282.

[57] RTC records, p. 6-A.

The policy states that the insured's application for the insurance is subject to the payment of the premium. There is no waiver of pre-payment, in full or in installment, of the premiums under the policy. Consequently, respondent cannot be placed in *estoppel*.

Thus, we find that petitioner is not entitled to the insurance proceeds because no insurance policy became effective for lack of premium payment.

The consequence of this declaration is that petitioner is entitled to a return of the premium paid for the vehicle in the amount of ₱55,620.60 under the principle of unjust enrichment. There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience.[58] Petitioner cannot claim the full amount of ₱140,893.50, which includes the payment of premiums for the two other vehicles. These two policies are not affected by our ruling on the policy subject of this case because they were issued as separate and independent contracts of insurance.[59] We, however, find that the award shall earn legal interest of 6% from the time of extrajudicial demand on July 7, 1997.[60]

WHEREFORE, the petition is **DENIED**. The assailed Decision of the CA dated September 11, 2009 and the Resolution dated November 24, 2009 are **AFFIRMED** with the **MODIFICATION** that respondent should return the amount of ₱55,620.60 with the legal interest computed at the rate of 6% per *annum* reckoned from July 7, 1997 until finality of this judgment. Thereafter, the total amount shall earn interest at the rate of 6% per *annum* from the finality of this judgment until its full satisfaction.

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[58] See *Flores v. Lindo, Jr.*, G.R. No. 183984, April 13, 2011, 648 SCRA 772, 782-783.

[59] *Rollo*, pp. 46-47.

[60] *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 453-459.

SO ORDERED.

Bersamin (Acting Chairperson), del Castillo,[*] and *Caguioa,*[**] *JJ.,* concur.

Reyes, J., on official leave.

SECOND DIVISION

[G.R. No. 199907. February 27, 2017]

ANITA CAPULONG, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ESTAFA; ELEMENTS; WAYS OF COMMITTING ESTAFA.— Fraud and injury are the two essential elements in every crime of *estafa*. The elements of *estafa* in general are: "1. That the accused defrauded another (a) by *abuse of confidence*, or (b) by means of *deceit*; and 2. That *damage* or *prejudice* capable of pecuniary estimation is caused to the offended party or third person." The first element covers the following ways of committing *estafa*: "1. With unfaithfulness or abuse of confidence; 2. By means of false pretenses or fraudulent acts; 3. Through fraudulent means. The first way of committing *estafa* is known as *estafa* with abuse of confidence, while the second and the third ways cover by means of deceit."

2. ID.; ID.; ESTAFA BY MEANS OF DECEIT; ELEMENTS.— The elements of estafa by means of deceit are as follows: "a.

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[*] Designated as additional Member per Raffle dated February 6, 2017.

[**] Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

That there must be a false pretense, fraudulent act or fraudulent means b. That such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud. c. That the offended party must have relied on the false pretense, fraudulent act or fraudulent means, that is, he was induced to part with his money or property because of the fraudulent act or fraudulent means. d. That as a result thereof, the offended party suffered damage."

3. ID.; ID.; ESTAFA UNDER ARTICLE 315, PARAGRAPH 3 (C); NOT LIMITED TO DOCUMENTS OR PAPERS THAT ARE EVIDENCE OF INDEBTEDNESS.— Anita is convicted of estafa under Article 315, paragraph 3 (c) of RPC x x x. This provision originated from Article 535, paragraph 9 of the Spanish Penal Code x x x. Anita contends that there is no competent proof that she actually removed, concealed or destroyed any of the papers contemplated in Article 315, paragraph 3 (c) of the RPC. Allegedly, pursuant to *Tan Jenjua, Kilayko*, and *Dizon*, the document removed, concealed or destroyed must contain evidence of indebtedness so as to cause prejudice, and the OR-CR are not of this nature. Contrary to Anita's supposition, neither Article 315, paragraph 3 (c) of the RPC nor Article 535, paragraph 9 of the old penal code requires that the documents or papers are evidence of indebtedness. Notably, while the old provision broadly covered "any process, record, document, or any other paper of **any character whatsoever**," the new provision refers to "documents or **any other papers**". Indeed, there is no limitation that the penal provision applies only to documents or papers that are evidence of indebtedness.

4. ID.; ID.; ID.; INTENT TO DEFRAUD; CAN ONLY BE PROVED BY UNGUARDED EXPRESSIONS, CONDUCT AND CIRCUMSTANCES, AND MAY BE INFERRED FROM FACTS AND CIRCUMSTANCES THAT APPEAR TO BE UNDISPUTED.— Fraudulent intent, being a state of mind, can only be proved by unguarded expressions, conduct and circumstances, and may be inferred from facts and circumstances that appear to be undisputed. For failure to comply with her promise to return the original OR-CR, or even furnish new ones in lieu thereof, and in misrepresenting that she already gave De Guzman the subject documents, Anita's intent to defraud is shown beyond question. Such malicious intent was even made more prominent with the replacement of the truck's engine

without De Guzman's knowledge and the unknown whereabouts of the vehicle.

5. ID.; ID.; ID.; ID.; THE EXTENT OF FRAUD, WHEN IT CONSISTS OF THE CONCEALMENT OF A DOCUMENT, SHOULD BE GRADED ACCORDING TO THE AMOUNT WHICH THE DOCUMENT REPRESENTS.— With the concealment of the OR-CR, Anita's act certainly caused a positive injury to De Guzman. The absence of the OR-CR practically rendered useless the chattel mortgage. Since the mortgage could not be properly registered with the LTO, the right to foreclose the truck could not be exercised. Anita made it difficult for De Guzman to collect the unpaid debt as the latter would be forced to file a collection suit instead of conveniently going through the foreclosure proceedings. It is of judicial notice that, as opposed to a civil case for sum of money, a foreclosure of mortgage involves much less time, effort and resources. x x x For the purpose of proving the existence of injury or damage, it is unnecessary to inquire whether, as a matter of fact, the unpaid debt could be or had been successfully collected. The commission of the crime is entirely independent of the subsequent and casual event of collecting the amount due and demandable, the result of which, whatever it may be, can in no wise have any influence upon the legal effects of the already consummated concealment of documents. The extent of a fraud, when it consists of the concealment of a document, should be graded according to the amount which the document represents, as it is evident that the gravity of the damage resulting therefrom would not be the same. Here, the OR-CR concealed pertains to the loan amount of ₱700,000.00; consequently, this must serve as the basis for grading the penalty corresponding to the crime. The damage results from the deprivation suffered by De Guzman of the concealed documents which are indispensable parts of the chattel mortgage, not the loss of the loan value itself.

APPEARANCES OF COUNSEL

Wilson G. Chua for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court (*Rules*) seeks to annul the November 12, 2010 Decision[1] and December 22, 2011 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. CR No. 28713, the dispositive portion of which states:

> **WHEREFORE,** premises considered, the Decision dated August 1, 2003 of the Regional Trial Court (RTC), Third Judicial Region, Branch 86 of Cabanatuan City, convicting Appellant Anita Capulong of the crime of Estafa as defined and penalized under Article 315, par. 3(c) of the Revised Penal Code is hereby **AFFIRMED with MODIFICATION,** in that the Appellant is sentenced to an indeterminate prison term of four (4) years and two (2) months of *prision correccional*, as minimum, to twenty years (20) of *reclusion temporal*, as maximum.
>
> **SO ORDERED**.[3]

In an Information filed on February 28, 1995, petitioner Anita Capulong (*Anita*) and her husband, Fernando Capulong (*Fernando*), (*Spouses Capulong*) were accused of the crime of Estafa, committed as follows:

> That on or about the 10th day of December, 1990, in Cabanatuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Spouses Fernando Capulong and Anita M. Capulong, having previously chattel mortgaged their Isuzu truck with Plate No. PLV-227 in the amount of ₱700,000.00 in favor of one FRANCISCA P. DE GUZMAN, with grave abuse of confidence, with intent to defraud and in conspiracy with each other, did then and there willfully, unlawfully and feloniously induce, thru false representation, said Francisca P. de Guzman to lend back to them

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[1] Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Antonio L. Villamor and Jane Aurora C. Lantion, concurring; *rollo*, pp. 753-766.

[2] *Rollo,* pp. 767-768.

[3] *Id*. at 765-766. (Emphasis in the original)

the Registration Certificate and the Official Receipt of Payment of registration fees of the above mortgaged truck under the pretext that they would use said documents in applying for additional loan and/or show said documents to somebody interested to buy said truck, but said accused once in possession of said documents, instead of doing so and with intent to cause damage, concealed or destroyed the above-described registration certificate and the official receipt, thereby preventing Francisca P. de Guzman from registering said chattel mortgage with the Land Transportation Office; that thereafter, herein accused even replaced the motor of subject truck with a different one, to the damage and prejudice of Francisca P. de Guzman in the aforestated amount of ₱700,000.00 as she was unable to register, much less foreclose, said chattel mortgage with the LTO because the motor number of the mortgaged truck indicated in the chattel mortgage was already different from the number of the new motor installed in said truck.

CONTRARY TO LAW.[4]

The Spouses Capulong pleaded not guilty in their arraignment.[5] Trial on the merits ensued.

Private complainant Francisca P. de Guzman (*De Guzman*), who was a relative[6] and neighbor of the Spouses Capulong, was presented as the lone witness for the prosecution. She testified that, on August 7, 1990, the accused obtained from her an amount of ₱700,000.00. As stipulated in the Promissory Note,[7] said amount, plus an agreed interest of 3% per month, would be paid by June 7, 1991. As a security for the loan, the Spouses Capulong executed a Chattel Mortgage with Power of Attorney[8] over their ten-wheeler Isuzu cargo truck, the original Official Receipt and Certificate of Registration (*OR-CR*)[9] of which were

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[4] Records, pp. 1-2.

[5] *Id*. at 209.

[6] According to Anita Capulong, Francisca P. de Guzman, or "Tia Pacing," is the first cousin of her mother-in-law, Carolina Bautista Aliño, TSN, August 17, 2001, pp. 6-7.

[7] Records, p. 366.

[8] *Id*. at 44-45, 363-364.

[9] *Id*. at 46, 365.

likewise delivered to De Guzman. On December 10, 1990, Anita requested to borrow the OR-CR for a week, excusing that she would apply for the amendment of the registration certificate to increase the weight or load capacity of the truck and show it to a prospective buyer. De Guzman was hesitant at first since the chattel mortgage was not yet registered, but she later on acceded. She gave the OR-CR in Cabanatuan City, where the same were being kept in a bank's safety deposit box. As proof of receipt, Anita issued a handwritten note.[10] Despite the expiration of the one-week period and De Guzman's repeated demands, the documents were not returned by Anita who countered that the loaned amount was already paid.

On the other hand, Anita admitted that she and her husband received from De Guzman the amount of ₱700,000.00; that they executed a chattel mortgage over their Isuzu cargo truck and delivered its OR-CR; and, that she borrowed the OR-CR and issued a handwritten receipt therefor. However, she claimed that the OR-CR were borrowed in De Guzman's house in Talavera, Nueva Ecija; that the words *"Cab. City"* and *"12/10/90"* in the upper righthand corner of the receipt were not written by her; and, that the OR-CR were returned to De Guzman a week after.

Due to the repeated absence of counsel for the defense, Anita did not finish her testimony and was not cross-examined. The case was submitted for decision based on evidence on record.[11]

On August 1, 2003, only Anita was convicted of the crime charged. Applying the Indeterminate Sentence Law, she was sentenced to suffer the penalty of *prision mayor* in its minimum period which has a range of six (6) years and one (1) day to 8 years imprisonment. In addition, she and Fernando were held jointly and severally liable to pay De Guzman the sum of Php700,000.00, plus 12% interest per annum from the date of its maturity until fully paid.

The trial court opined:

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[10] *Id.* at 304, 367.

[11] *Id.* at 498-499.

The defense interposed by the accused is a mere denial. They are denying the allegation of the private complainant that the documents were never returned. Accused Anita Capulong, when asked during [her] direct examination testified:

> "Question: It says here, 'to be returned after one week from date,' were you able to return the said Registration Certificate and Official Receipt as promised by you in accordance with this document?
>
> Answer: Yes, sir.
>
> Question: To whom did you return?
>
> Amswer: To Tia Pacing, sir."[12]

The denial of the accused cannot overcome the positive assertion of the complainant, coupled with a document which was even in the own handwriting of accused Anita Capulong.. If it is true that the documents were returned, herein accused should have asked for the document evidencing her receipt of the Certificate of Registration and Official Receipt. Furthermore, it is highly improbable that herein private complainant would undergo the expense, trouble and inconvenience of prosecuting the instant case, which lasted for several years, if her allegation is a mere fabrication.

The denials interposed by the accused are shallow and incredible. It is proven that accused Anita Capulong failed to comply with her obligation to return the borrowed documents, as promised. She concealed the documents after she received them from herein private [complainant]. Now the accused are even concealing the cargo truck subject of the chattel mortgage despite orders from this Court to give information about the truck. These facts established the first essential [element] of the crime charged.

The Certificate of Registration and Official Receipt were delivered to herein private complainant as security to the indebtedness of the two accused. Meaning, if in case the accused fail to pay their obligation, the private complainant is assured that she will recover what was loaned after foreclosing on the mortgaged truck. Without the aforementioned documents, the chattel mortgage is of no effect considering that the evidence of ownership of the accused over the cargo truck were no longer in the possession of Mrs. De Guzman.

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[12] TSN, August 17, 2001, p. 7.

The concealment of the Certificate of Registration and Official Receipt caused a positive injury to herein private complainant considering that she could not register the chattel mortgage with the Land Transportation Office and neither could she exercise her right to foreclose the truck because of what the accused did. Clearly, herein private complainant was deprived of a means to collect from the accused. The accused made it difficult for the private complainant to collect the obligation from them. The second element, is therefore, fully proven.

As to the words "Cab. City" written in the document marked as Exhibit D for the prosecution, the private complainant admitted that she wrote the same and she was able to explain why she did that. She testified during her direct examination:

> "Question: On the uppermost right portion of this document, there appears two words 'Cab. City', do you know who wrote this?
>
> Answer: Yes, sir.
>
> Question: Who?
>
> Answer: Me, sir.
>
> Question: Why did you write these words, 'Cab. City'?
>
> Answer: Because such place was not written, so I wrote it, sir."

As to the extent of the injury, it was held by the Supreme Court in the case of United States vs. Tan Jenjua, 1 Phil. Rep. 38, "must be based upon the amount which such a note represents without regard to whether or not the amount is actually collected subsequent to the destruction."[13]

Anita moved for a new trial on the alleged ground of incompetence and negligence of her former counsel.[14] It was denied in the Order[15] dated February 26, 2004. In her motion for reconsideration, she added that a new and material evidence,

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[13] Records, pp. 513-515; *rollo*, pp. 150-152.

[14] Records, pp. 520-522.

[15] *Id*. at 535-536.

particularly Solidbank Check No. PA074896 dated September 8, 1992 in the amount of ₱700,000.00, had been discovered as proof of payment of the amount subject of this case.[16] However, in its Order dated May 17, 2004, the trial court denied the motion reasoning that the check is actually a forgotten, not a newly discovered, evidence "as it was all along readily available to [the] accused."[17] Consequently, a Notice of Appeal[18] was filed.

On November 12, 2010, the CA affirmed Anita's conviction, but modified her sentence to an indeterminate prison term of four (4) years and two (2) months of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum.

We paraphrase the CA's pronouncements:

Contrary to Anita's interpretation, the documents or papers referred to in Article 315, Paragraph 3 (c) of the RPC are not limited to those emanating from the courts or government offices. Based on the rulings in *United States v. Tan Jenjua*,[19] *United States v. Kilayko*,[20] and *People v. Dizon*,[21] it is clear that the OR-CR fall within the purview of said article. The fact that the motor vehicle is nowhere to be found only leads to the conclusion that Anita concealed the borrowed documents. Besides, if she really returned the same, she should have caused the cancellation of the note when she borrowed the OR-CR or, at the very least, made an entry therein of the date of return of the documents. With the concealment of the OR-CR, Anita clearly had the intention to defraud De Guzman, who was effectively deprived of the convenient way of foreclosing the chattel mortgage absent the evidence of ownership of the chattel itself.

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[16] *Id.* at 537-539.

[17] *Id.* at 544-545.

[18] *Id.* at 546-547.

[19] 1 Phil. 38 (1901).

[20] 31 Phil. 371 (1915).

[21] 47 Phil. 350 (1925).

Further, Anita was not denied of her constitutional right to due process. While her counsel failed to object to the prosecution's verbal motion to strike out her testimonies from the records, which was granted on May 23, 2002, her counsel filed a petition to lift the trial court's Order. The petition was granted per Order dated October 17, 2002, which likewise allowed Anita to testify at the next scheduled hearing. Despite due notice, Anita's counsel, however, again failed to appear at the March 21, 2003 hearing scheduled for the presentation of further evidence. Prior thereto, the trial court, in its Order dated January 31, 2003, already warned that the case would be deemed submitted for resolution if Anita and her counsel fail to appear on March 21, 2003.

Finally, Solidbank Check No. PA074896 dated September 8, 1992 does not satisfy the requisites of a newly-discovered evidence as it already existed long before the filing of the Information on February 28, 1995. Had Anita exercised reasonable diligence, she could have produced said check during the trial. It is too unbelievable for her not to have searched and produced the check considering that it was for the payment of a ₱700,000.00 indebtedness. Even if the check qualifies as a newly-discovered evidence, the same would still be inconsequential since reimbursement or belated payment does not extinguish criminal liability in estafa.

Anita filed a motion for reconsideration of the CA Decision, but it was denied.

Before Us, Anita pleads for an acquittal or, in the alternative, the remand of the case to the court *a quo* for new trial. The following issues are raised:

I. WHETHER OR NOT THE COURT OF APPEALS COMMITTED SUCH A SEVERE DEGREE OF SERIOUS REVERSIBLE ERROR AND GRAVE ABUSE OF DISCRETION THAT WARRANTS THE RELAXATION OF THE RESTRICTION OF RAISING ONLY QUESTIONS OF LAW IN PETITIONS FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT;

II. WHETHER OR NOT THE COURT OF APPEALS COMMITTED SERIOUS ERROR AND GRAVELY ABUSED ITS

DISCRETION IN NOT ACQUITTING THE PETITIONER OUTRIGHT ON ACCOUNT OF THE FACT THAT THE ELEMENTS OF ESTAFA UNDER ARTICLE 315, PARAGRAPH 3 (C), PERTAINING TO PREJUDICE ARE MARKEDLY ABSENT;

III. WHETHER OR NOT THE COURT OF APPEALS COMMITTED SERIOUS ERROR AND GRAVELY ABUSED ITS DISCRETION IN NOT ACQUITTING THE PETITIONER OUTRIGHT DESPITE THE FACT THAT IT WAS SUFFICIENTLY ESTABLISHED THAT SHE HAD ALREADY PAID HER OBLIGATIONS IN FULL; AND

IV. WHETHER OR NOT THE COURT OF APPEALS COMMITTED SERIOUS ERROR AND GRAVELY ABUSED ITS DISCRETION IN NOT GRANTING THE REMAND OF THE CASE TO THE COURT OF ORIGIN FOR RE-TRIAL AT THE MINIMUM AS THE PETITIONER WAS CLEARLY DEPRIVED OF HER DAY IN COURT.[22]

The appeal is unmeritorious.

Fraud and injury are the two essential elements in every crime of estafa.

The elements of *estafa* in general are:

1. That the accused defrauded another (a) by *abuse of confidence*, or (b) by means of *deceit*; and
2. That *damage* or *prejudice* capable of pecuniary estimation is caused to the offended party or third person.

The first element covers the following ways of committing *estafa*:

1. With unfaithfulness or abuse of confidence;
2. By means of false pretenses or fraudulent acts;
3. Through fraudulent means.

The first way of committing *estafa* is known as *estafa* with abuse of confidence, while the second and the third ways cover by means of deceit.[23]

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[22] *Rollo*, pp. 24, 355.

[23] *Madrigal v. Department of Justice*, 726 Phil. 544, 553 (2014).

The elements of estafa by means of deceit are as follows:

a. That there must be a false pretense, fraudulent act or fraudulent means

b. That such false pretense, fraudulent act or fraudulent means must be made or executed prior to ot simultaneously with the commission of the fraud.

c. That the offended party must have relied on the false pretense, fraudulent act or fraudulent means, that is, he was induced to part with his money or property because of the fraudulent act or fraudulent means.

d. That as a result thereof, the offended party suffered damage.[24]

Anita is convicted of estafa under Article 315, paragraph 3 (c) of RPC, which provides:

Art. 315. *Swindling (estafa).* – Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x x x x x x

x x x the fraud be committed by any of the following means:

x x x x x x x x x

3. Through any of the following fraudulent means:

x x x x x x x x x

(c) By removing, concealing or destroying, in whole or in part, any court record, office files, document or any other papers. [25]

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[24] *Paredes v. Calilung,* 546 Phil. 198, 223 (2007).

[25] For a successful prosecution of the crime, the elements that must be established are:

1.That there be court record, office files, documents or any other papers;

2.That the offender removed, concealed or destroyed any of them; and

3. That the offender had intent to defraud another. (See Reyes, Luis B., *The Revised Penal Code* [Book Two], 18th Ed. 2012, p. 846).

This provision originated from Article 535, paragraph 9 of the Spanish Penal Code,[26] which stated:

> The following shall incur the penalties of the preceding articles:
>
> Those who shall commit fraud by withdrawing, concealing, or destroying, in whole or in part, any process, record, document, or any other paper of any character whatsoever.
>
> If the crime should be committed without the intent to fraud, a fine of from 325 to 3,250 pesetas shall be imposed on the author.[27]

The old penal law was applied in the cases of *Tan Jenjua* (concealment of a private document evidencing a deposit), *Kilayko* (destruction of a promissory note), and *Dizon* (destruction of chits for articles bought on credit). Likewise, in *United States v. Gomez Ricoy*,[28] this Court held that the maker of a promissory note, which was given to cover losses incurred at *monte* in a gambling house, who obtained possession of his note and concealed or destroyed it, is *prima facie* guilty of estafa.

Justice Charles E. Willard, however, dissented from the majority ruling in *Ricoy*. He asserted that if ever there was a binding obligation, the one liable should be the casino because it was the one which issued the chips and checks, as well as promised to redeem them. Nevertheless, there was no obligation that could be validly enforced considering that, by express terms of Article 1305 of the Old Civil Code,[29] the casino and the private complainant were engaged in illegal gambling. He further opined:

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[26] The RPC took effect on January 1, 1932. (See *People v. Alcaraz*, 56 Phil. 520, 521 (1932) and *People v. Carballo*, 62 Phil. 651, 652 (1935).

[27] See *United States v. Parcon*, 11 Phil. 323, 325 (1908).

[28] 1 Phil. 595 (1902).

[29] Art. 1305 of the Old Civil Code says:

> When the nullity arises from the illegality of the consideration or the object of the contract, if the fact constitutes a crime or misdemeanour common to both contracting parties, they shall have no action against each other, and proceedings shall be instituted against them, and furthermore, the things or sum which may have been the object of the contract shall be

Was the concealment or destruction of the *vale* by Ricoy an offense punished by Article 535, 9 of the PENAL Code?

It represented no obligation. It did not prove or tend to prove the existence or extinction of any right. It was simply a small piece of paper with writing on it. As a mere piece of paper, its intrinsic value is too small to be appreciable. Its destruction could not injure Angeles, for it had no value extrinsic or intrinsic.

The words of Article 535, 9, are "any process, record, document, or any other paper of any character whatsoever." While this language is broad, it cannot be construed as including the destruction of any kind of a paper regardless of what it is in itself or what it represents. A letter of friendship, a card of invitation, a note of regret, which have no value extrinsic or intrinsic, cannot be covered by it.

The constant doctrine of the Supreme Court has been that no person could be convicted of *estafa* unless damage has resulted. It matters not that there may have been deceit or that the defendant thought he was causing damage. If the act which he did was from the nature of the object incapable of causing that damage, there can be no conviction. (Judgment of February 4, 1874.)[30]

In this case, Anita contends that there is no competent proof that she actually removed, concealed or destroyed any of the papers contemplated in Article 315, paragraph 3 (c) of the RPC. Allegedly, pursuant to *Tan Jenjua*, *Kilayko*, and *Dizon*, the document removed, concealed or destroyed must contain evidence of indebtedness so as to cause prejudice, and the OR-CR are not of this nature.

Contrary to Anita's supposition, neither Article 315, paragraph 3 (c) of the RPC nor Article 535, paragraph 9 of the old penal code requires that the documents or papers are evidence of indebtedness. Notably, while the old provision broadly covered "any process, record, document, or any other paper of **any character whatsoever**," the new provision refers to "documents

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applied as prescribed in the Penal Code with regard to the goods or instruments of the crime or misdemeanour. (See *United States v. Gomez Ricoy*, *supra*, at 600.

[30] *United States v. Gomez Ricoy*, *supra* note 28, at 601.

or **any other papers**." Indeed, there is no limitation that the penal provision applies only to documents or papers that are evidence of indebtedness.

Assuming, for the sake of argument, that Article 315, paragraph 3 (c) of the RPC merely penalizes the removal, concealment or destruction of documents or papers that are evidence of indebtedness, still Anita cannot be acquitted. In Our mind, the promissory note, the chattel mortgage, and the checks that she executed are not the only proof of her debt to De Guzman. In a chattel mortgage of a vehicle, the OR-CR should be considered as evidence of indebtedness because they are part and parcel of the entire mortgage documents, without which the mortgage's right to foreclose cannot be effectively enforced.

In case of default in payment, the mortgaged property has to be sold at public auction so that its proceeds would satisfy, among others, the payment of the obligation secured by the mortgage. Prior to the foreclosure, however, the encumbrance must be annotated in the Chattel Mortgage Registry of the Register of Deeds and the LTO, where the OR-CR must be presented. The LTO requires, among others, not just the original copy of the CR and the latest OR of the payment of motor vehicle user's charge and other fees but even the actual physical inspection of the motor vehicle by the District Office accepting the annotation. As a businesswoman, Anita knows or is expected to know these procedures. In fact, the Spouses Capulong initially surrendered the OR-CR of the cargo truck precisely to give effect to the chattel mortgage they executed in favour of De Guzman.

Based on records, it cannot be doubted that the subject OR-CR were never returned by Anita. Her testimony, aside from not having been subject to cross-examination, is self-serving and not corroborated by testimonial or documentary evidence. As correctly opined by the courts below, if it is true that the OR-CR were returned, Anita should have taken possession of the document evidencing her receipt of the OR-CR, or caused its cancellation, or made an entry therein of the date of return

of the subject documents. Further, it is highly improbable that De Guzman would undergo the expense, trouble, and inconvenience of prosecuting this case, which has dragged on for more than 20 years already, if her accusation is just a made-up story. In like manner, We held in *Tan Jenjua*:

> x x x The latter's refusal to return the document is shown in the record solely by the testimony of the complaining witness. No other witness testifies upon this point nor has any attempt been made to introduce evidence on the subject. Nevertheless, we can entertain no reasonable doubt as to the truth of this fact. Supposing that the complainant had had no difficulty in recovering possession of the document, unquestionably she would not have failed to do so when it is considered that the recovery of the document was a matter of great interest to her as evidence of a deposit of a considerable sum of money. Furthermore, if this fact was not true, the defendant could have shown such to be the case from the first by simply returning the document; it was to his interest to do so, but nevertheless he has not done it. The failure to return the document up to the present time, notwithstanding the criminal prosecution brought against him on this account, conclusively shows his determination to conceal the paper. There are some facts which do not require proof because they are self-evident; and the unvarying attitude of the defendant in this case is the most complete and convincing proof of his refusal to return the document.[31]

Fraudulent intent, being a state of mind, can only be proved by unguarded expressions, conduct and circumstances, and may be inferred from facts and circumstances that appear to be undisputed.[32] For failure to comply with her promise to return the original OR-CR, or even furnish new ones in lieu thereof, and in misrepresenting that she already gave De Guzman the subject documents, Anita's intent to defraud is shown beyond question. Such malicious intent was even made more prominent with the replacement of the truck's engine without De Guzman's knowledge and the unknown whereabouts of the vehicle.

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[31] *United States v. Tan Jenjua, supra* note 19, at 42-43.

[32] *Id.*

With the concealment of the OR-CR, Anita's act certainly caused a positive injury to De Guzman. The absence of the OR-CR practically rendered useless the chattel mortgage. Since the mortgage could not be properly registered with the LTO, the right to foreclose the truck could not be exercised. Anita made it difficult for De Guzman to collect the unpaid debt as the latter would be forced to file a collection suit instead of conveniently going through the foreclosure proceedings. It is of judicial notice that, as opposed to a civil case for sum of money, a foreclosure of mortgage involves much less time, effort and resources.

Justice Willard's dissent in *Ricoy* finds no application in this case, on the grounds that: (1) unlike in *Tan Jenjua*, *Kilayko*, and *Dizon*, the decision in *Ricoy* is not a final and executory judgment on the merits;[33] (2) the parties involved therein are engaged in an illicit transaction which cannot give rise to a cause of action enforceable before the courts of law; and (3) in contrast with the OR-CR, the *vale* was considered as a mere piece of paper with no extrinsic or intrinsic value and, therefore, incapable of causing damage.

For the purpose of proving the existence of injury or damage, it is unnecessary to inquire whether, as a matter of fact, the

[33] The Court held:

> The act of which the accused is charged and as it appears to have been committed constitutes *prima facie* a crime. The decision of his inculpability and the judgment of acquittal were premature, the trial not having been terminated either on behalf of the prosecution or defense. The latter had not been able to offer or introduce any testimony, and it appears that on frequent occasions during the taking of the testimony for the prosecution the defense was not allowed to introduce testimony in its behalf, which was postponed to the proper time.
>
> The accused being entitled to a full and complete trial, we are of the opinion that the judgment of acquittal rendered by the Court of First Instance must be set aside and the case remanded, with directions to the court to continue the same from the point in which it was interrupted by the decision, without retaking the testimony received up to that time, which, insofar as it may be relevant and competent, may be considered, and such evidence as may be offered by the accused, and any additional evidence which either of the parties may be entitled to introduce will be taken in the manner prescribed by law. x x x. (*United States v. Gomez Ricoy*, *supra* note 28, at 598.

unpaid debt could be or had been successfully collected.[34] The commission of the crime is entirely independent of the subsequent and casual event of collecting the amount due and demandable, the result of which, whatever it may be, can in no wise have any influence upon the legal effects of the already consummated concealment of documents.

The extent of a fraud, when it consists of the concealment of a document, should be graded according to the amount which the document represents, as it is evident that the gravity of the damage resulting therefrom would not be the same.[35] Here, the OR-CR concealed pertains to the loan amount of ₱700,000.00; consequently, this must serve as the basis for grading the penalty corresponding to the crime. The damage results from the deprivation suffered by De Guzman of the concealed documents which are indispensable parts of the chattel mortgage, not the loss of the loan value itself.

The CA correctly modified Anita's sentence to an indeterminate prison term of four (4) years and two (2) months of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum. It erred, however, in not eliminating that part of the RTC judgment wherein the Spouses Capulong were likewise sentenced to jointly and severally pay De Guzman the sum of ₱700,000.00, plus twelve percent (12%) interest *per annum* from the date of its maturity until fully paid. No indemnity for the injury caused is allowed notwithstanding the fact that the sentence of imprisonment is exactly the same as if the defendant had received the amount and appropriated it to his or her own use.[36] The reason being that the concealment of the document does not necessarily involve the loss of the money loaned, and for this reason, it would not be just to give judgment against the defendant for the payment of that amount.[37]

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[34] *United States v. Tan Jenjua, supra* note 19, at 43 and *United States v. Kilayko, supra* note 20, at 374.

[35] *Id.*

[36] *United States v. Tan Jenjua, supra* note 19, at 43. See also *United States v. Kilayko, supra* note 20, at 374-375.

[37] *United States v. Kilayko, supra* note 20, at 375.

With regard to the other issues raised by Anita, the Court deems it wise not to dwell on the same. It would be superfluous to discuss since the matters were satisfactorily passed upon by the RTC and the CA.

WHEREFORE, premises considered, the petition is **DENIED**. The November 12, 2010 Decision and December 22, 2011 Resolution of the Court of Appeals in CA-G.R. CR No. 28713, which affirmed with modification the August 1, 2003 Decision of the Regional Trial Court, Branch 86, Cabanatuan City, Nueva Ecija, convicting appellant Anita Capulong of the crime of Estafa as defined and penalized under Article 315, Paragraph 3 (c) of the Revised Penal Code, are **AFFIRMED**. The Regional Trial Court judgment, which ordered the Spouses Capulong to jointly and severally pay De Guzman the sum of ₱700,000.00, plus twelve percent (12%) interest *per annum* from the date of its maturity until fully paid, is **DELETED**.

SO ORDERED.

Carpio (Chairperson) and *Mendoza, JJ.,* concur.

Perlas-Bernabe[*] and *Leonen, JJ.,* on official leave.

SECOND DIVISION

[G.R. No. 211917. February 27, 2017]

NORMA C. GAMARO and JOSEPHINE G. UMALI, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

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[*] Designated Fifth Member in lieu of Associate Justice Francis H. Jardeleza, per Special Order No. 2416-V, dated January 4, 2017.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; THE ACTUAL RECITAL OF FACTS STATED IN THE INFORMATION DETERMINES THE REAL NATURE AND CAUSE OF THE ACCUSATION AGAINST AN ACCUSED AND NOT THE CAPTION OF THE INFORMATION NOR THE SPECIFICATION OF THE PROVISION OF LAW ALLEGED TO HAVE BEEN VIOLATED.—** The Bill of Rights of the 1987 Constitution guarantees some rights to every person accused of a crime, among them the right to be informed of the nature and cause of the accusation x x x. The constitutional provision requiring the accused to be "informed of the nature and cause of the accusation against him" is for him to adequately and responsively prepare his defense. The prosecutor is not required, however, to be absolutely accurate in designating the offense by its formal name in the law. It is hornbook doctrine that what determines the real nature and cause of the accusation against an accused is the actual recital of facts stated in the information or complaint and not the caption or preamble of the information or complaint nor the specification of the provision of law alleged to have been violated, they being conclusions of law. The controlling words of the information are found in its body.

2. **ID.; ID.; ID.; ID.; WHERE THE ACCUSED WAS CONVICTED OF A CRIME DIFFERENT FROM THE CRIME CHARGED, WHAT IS OF VITAL IMPORTANCE TO DETERMINE IS WHETHER OR NOT THE ACCUSED WAS CONVICTED OF THE CRIME CHARGED IN THE INFORMATION AS EMBRACED WITHIN THE ALLEGATIONS CONTAINED THEREIN; CASE AT BAR.—** In the instant case, the crime of estafa charged against petitioners is defined and penalized by Article 315, paragraph 2 (a) of the Revised Penal Code x x x. The elements of the said crime are as follows: (1) there must be a false pretense, fraudulent acts or fraudulent means; (2) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) the offended party must have relied on the false pretense, fraudulent act or

fraudulent means and was thus induced to part with his money or property; and (4) as a result thereof, the offended party suffered damage. However, the crime petitioner Norma Gamaro was convicted of is estafa under Article 315, paragraph 1(b) of the Revised Penal Code x x x. The elements of estafa under Article 315, paragraph 1(b) are as follows: (1) that money, goods, or other personal properties are received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same; (2) that there is a misappropriation or conversion of such money or property by the offender or a denial of the receipt thereof; (3) that the misappropriation or conversion or denial is to the prejudice of another; and (4) that there is a demand made by the offended party on the offender. The question then is whether the facts in the Information do indeed constitute the crime of which petitioner Norma Gamaro was convicted. x x x What is of vital importance to determine is whether or not petitioner Norma Gamaro was convicted of a crime charged in the Information as embraced within the allegations contained therein. A reading of the Information yields an affirmative answer. The Information filed sufficiently charges estafa through misappropriation or conversion. Fineza entrusted petitioner Norma Gamaro with the pieces of jewelry amounting to ₱2,292,519.00 on the condition that the same will be sold for profit. Petitioner Norma Gamaro was under obligation to turn over the proceeds of the sale to Fineza. However, instead of complying with the obligation, she pawned the pieces of jewelry to M. Lhuillier Pawnshop where petitioner Umali worked as Branch Manager and kept the proceeds thereof to the damage and prejudice of Fineza.

3. ID.; ID.; ID.; ID.; THE TRIAL COURT HAS THE DISCRETION TO READ THE INFORMATION IN THE CONTEXT OF THE FACTS ALLEGED THEREIN; CASE AT BAR.— Paragraph 1(b) provides liability for estafa committed by misappropriating or converting to the prejudice of another money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though that obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property. This, at least, is very

clearly shown by the factual allegations of the Information. There is, therefore, no ambiguity in the Information. The factual allegations therein sufficiently inform petitioners of the acts constituting their purported offense and satisfactorily allege the elements of estafa by misappropriation. Petitioners are fully apprised of the charge against them and for them to suitably prepare their defense. Therefore, petitioner Norma Gamaro was not deprived of any constitutional right. She was sufficiently apprised of the facts that pertained to the charge and conviction for estafa, because the RTC has the discretion to read the Information in the context of the facts alleged.

4. CRIMINAL LAW; REVISED PENAL CODE; ESTAFA BY MISAPPROPRIATION; THE ESSENCE OF THIS KIND OF ESTAFA IS THE APPROPRIATION OR CONVERSION OF MONEY OR PROPERTY RECEIVED TO THE PREJUDICE OF THE ENTITY TO WHOM A RETURN SHOULD BE MADE.— [T]he prosecution was able to prove the crime of estafa under paragraph 1(b). As held by the CA, Fineza positively and categorically testified on the transaction that transpired between her and petitioners and accused Rowena Gamaro. The failure to account upon demand, for funds or property held in trust, is circumstantial evidence of misappropriation. x x x [P]etitioner Norma Gamaro failed to account for, upon demand, the jewelry which was received by her in trust. This already constitutes circumstantial evidence of misappropriation or conversion to petitioner's own personal use. The failure to return upon demand the properties which one has the duty to return is tantamount to appropriating the same for his own personal use. As in fact, in this case, Fineza, herself redeemed the pieces of jewelry using her own money. The essence of this kind of estafa is the appropriation or conversion of money or property received to the prejudice of the entity to whom a return should be made. The words convert and misappropriate connote the act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right. In proving the element of conversion or misappropriation, a legal presumption of misappropriation arises when the accused fails to deliver the

proceeds of the sale or to return the items to be sold and fails to give an account of their whereabouts.

5. LEGAL ETHICS; ATTORNEYS; RULE ON PRIVILEGED COMMUNICATION BETWEEN ATTORNEY AND CLIENT; REQUISITES.— We are not persuaded by the argument raised by petitioners that the testimony of prosecution witness Atty. Baldeo violated the rule on "privileged communication between attorney and client" for the reason that Atty. Baldeo allegedly gave petitioner Norma Gamaro "advise" regarding her case. The factors essential to establish the existence of the privilege are: "(1) There exists an attorney-client relationship, or a prospective attorney-client relationship, and it is by reason of this relationship that the client made the communication; (2) The client made the communication in confidence; (3) The legal advice must be sought from the attorney in his professional capacity." The mere relation of attorney and client does not raise a presumption of confidentiality. The client must intend the communication to be confidential. A confidential communication refers to information transmitted by voluntary act of disclosure between attorney and client in confidence and by means which, so far as the client is aware, discloses the information to no third person other than one reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it was given. The communication made by a client to his attorney must not be intended for mere information, but for the purpose of seeking legal advice from his attorney as to his rights or obligations. The communication must have been transmitted by a client to his attorney for the purpose of seeking legal advice.

6. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT ARE GENERALLY ACCORDED THE HIGHEST DEGREE OF RESPECT AND ARE CONSIDERED CONCLUSIVE BETWEEN THE PARTIES.— It is a well-entrenched doctrine that factual findings of the trial court, especially when affirmed by the appellate court, are accorded the highest degree of respect and are considered conclusive between the parties. Though jurisprudence recognizes highly meritorious exceptions, none of them obtain herein which would warrant a reversal of the challenged Decision. We stick to the findings of fact of the

RTC which was sustained by the CA that petitioner Norma Gamaro received some pieces of jewelry from Fineza, and accused Rowena Gamaro pawned the jewelry entrusted to them by Fineza which is a clear act of misappropriation x x x.

7. CRIMINAL LAW; REVISED PENAL CODE; CIVIL LIABILITY; NOT EXTINGUISHED IF THE ACQUITTAL OF THE ACCUSED IS BASED ON REASONABLE DOUBT.— [A]s to the civil liability of Umali despite her acquittal, We note the declaration of the RTC that Umali had knowledge as to who owned the jewelry pledged with M. Lhuiller Pawnshop. The RTC further pointed out that Umali was part of the business transaction between Norma Gamaro and Rowena Gamaro with Fineza, as she too signed the Joint Solidary Account Agreement with Banco Filipino to enable them to open a checking account. It was against this account that Norma and Rowena Gamaro drew the checks that they issued to guarantee the share of Fineza from the proceeds of the sale of the pieces of jewelry. These findings support the conclusion of the CA that Umali's acquittal was based on reasonable doubt. Hence, Umali's civil liability was not extinguished by her discharge.

APPEARANCES OF COUNSEL

Bayoneta & Associates Law Office for petitioners.
Office of the Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court which seeks the reversal of the Decision[2] dated November 25, 2013, and Resolution[3] dated February 21, 2014 of the Court of Appeals (*CA*) in CA-G.R. CR No. 34454.

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[1] *Rollo,* pp. 13-43.

[2] Penned byAssociate Justice Socorro B. Inting, with Associate Justices Jose C. Reyes, Jr. and Mario V. Lopez, concurring; *id.* at 47-56.

[3] *Id.* at 44-A-45.

The CA affirmed the Decision of the Regional Trial Court (*RTC*), Branch 32, San Pablo City in Criminal Case No. 15407 finding petitioner Norma C. Gamaro guilty of Estafa under Article 315, paragraph 1(b) of the Revised Penal Code, while exonerating petitioner Josephine G. Umali from the crime charged. The RTC also adjudged the petitioners jointly and severally liable to pay the monetary awards in favor of private complainant Joan Fructoza E. Fineza.

The factual antecedents are as follows:

On March 1, 2005, the petitioners were charged with Estafa under Article 315, paragraph 2(a), of the Revised Penal Code before Branch 32 of the RTC of San Pablo City under the following Information:

> That on or about January 2, 2002, in the City of San Pablo, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the accused above-named, conspiring, confederating and mutually helping one another, did then and there, defraud one JOAN FRUCTOZA E. FINEZA, in the following manner, to wit: That Norma C. Gamaro, pretending that she is knowledgeable in the business of buy and sell of jewelry, other merchandise and financing, assuring complainant of a sure market and big profit lure and entice complainant Joan Fructoza E. Fineza to enter into the business and the latter purchased and delivered to her the jewelry amounting to ₱2,292,519.00 with the obligation to manage the business for private complainant and remit the proceeds of the sale to her, but accused, far from complying, with her obligation, managed the business as her own, failing to remit the proceeds of the sale and pledging jewelries to Lluillier Pawnshop where accused Josephine Umali work while the checks issued by respondent Rowena Gamaro to guarantee their payment were all dishonoured for having been drawn against insufficient funds, to the damage and prejudice of the offended party in the aforementioned amount.
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> CONTRARY TO LAW.[4]

When arraigned on August 4, 2005, petitioners pleaded not guilty to the crime charged, while accused Rowena C. Gamaro remained at-large.[5] Thereafter, trial on the merits ensued.

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[4] *Id.* at 74.

[5] *Id.* at 48.

The evidence disclosed the following facts:

Sometime in 2002, private complainant Joan Fructoza E. Fineza (*Fineza*) engaged in a business venture with petitioner Norma C. Gamaro and her daughters – petitioners Josephine G. Umali (*Umali*) and accused Rowena Gamaro Fineza would buy any foreclosed pieces of jewelry from M. Lhuillier Pawnshop whenever informed by Umali who was then the manager of the said pawnshop located at Basa St., San Pablo City, Laguna. The pieces of jewelry would then be sold for profit by Norma Gamaro to her co-employees at the Social Security System (*SSS*) in San Pablo City. The proceeds of the sale would then be divided among them in the following manner: fifty percent (50%) would go to Fineza, while the other fifty percent (50%) would be divided among Umali, Norma Gamaro and Rowena Gamaro. As security for the pieces of jewelry which were placed in the possession of Norma Gamaro and her daughter Rowena Gamaro, the two would issue several checks drawn from their joint bank account in favor of Fineza reflecting the appraised amount of the pieces of jewelry.[6]

The business venture was initially successful. However, when Fineza discovered that Norma Gamaro, together with her daughters Rowena Gamaro and Umali, also engaged in a similar business with other suppliers of pieces of jewelry, she decided to terminate the business. To wind up the business, it was agreed that Norma Gamaro and Rowena Gamaro would just dispose or sell the remaining pieces of jewelry in their possession. But when Fineza tried to encash the checks which were issued to her by Rowena Gamaro, the same were dishonored because the account of the Gamaros had been closed. Fineza then confronted petitioner Norma Gamaro about the dishonored checks, and the latter confessed that she did not have enough money to cover the amount of the checks. Fineza also learned that the pieces of jewelry were pawned to several pawnshops and private individuals contrary to what they had agreed upon. Petitioner Norma Gamaro furnished Fineza with a list of the pawnshops, such that, the latter was compelled to redeem the pieces of jewelry with her own money. It appeared in

[6] *Id.* at 48-49.

the pawnshop tickets that it was the nephew of Norma Gamaro named Frederick San Diego who pledged the pieces of jewelry.[7]

To settle the matter, Fineza asked Norma Gamaro to return the remaining pieces of jewelry in her possession but the latter failed to do so, and instead, offered her house and lot as payment for the pieces of jewelry. Fineza, however, did not accept the said offer.[8]

A demand letter was then sent by Fineza to Umali, Norma Gamaro and Rowena Gamaro, dated February 16, 2004, asking for the return of the amount of ₱2,292,519.00 as payment for all the pieces of jewelry which were not returned to her, including the cash given by Fineza for the rediscounting business. The demand letter was left unanswered.[9]

For her part, Norma Gamaro, averred that she had no involvement in the jewelry business of her daughters. Umali likewise denied having any business dealings with her sister Rowena Gamaro and with Fineza. While admitting that there were pieces of jewelry pledged by her cousin, Frederick San Diego, in the pawnshop where she was the manager, Umali denied that she knew where those pieces of jewelry came from.[10]

On July 25, 2011, the RTC issued a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, this court hereby renders judgment, as follows:

a. **FINDING** accused **Norma Gamaro** guilty beyond reasonable doubt of the crime of estafa as defined and penalized under Section 1(b), Article 315 of the Revised Penal Code, and hereby sentences her to suffer the indeterminate prison term of Four (4) Years and Two (2) Months of *Prision Correccional*, as Minimum, to Twenty (20) Years of *Reclusion Temporal*, as Maximum;

b. **EXONERATING** accused **Josephine G. Umali** of any criminal liability;

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[7] *Id.* at 49.

[8] *Id.*

[9] *Id.* at 49-50.

[10] *Id.* at 50.

c. **DIRECTING** both accused **Norma Gamaro** and **Josephine Umali** to pay the private complainant jointly and solidarily the following amounts:

1. ₱1,259,841.46, plus legal interest from date of demand on February 16, 2004, until fully paid;
2. ₱50,000.00 for and by way of moral damages;
3. ₱25,000.00, for and by way of exemplary damages;
4. ₱50,000.00, for and by way of attorney's fees; and
5. To pay the costs.

Let a warrant issue for the arrest of **Rowena Gamaro.** The Bureau of Immigration is likewise directed to issue a HOLD DEPARTURE ORDER against ROWENA GAMARO, her personal circumstances are as follows:

Name:	ROWENA C. GAMARO
Former Residence:	Lot 20, Block 16, National Housing Authority (NHA), Brgy. San Jose, San Pablo City

SO ORDERED.[11]

Aggrieved, petitioners filed an appeal before the CA. In a Decision dated November 25, 2013, the CA affirmed the Decision of the RTC. The *fallo* of the Decision states:

WHEREFORE, the instant appeal is **DENIED**. The assailed Decision dated July 25, 2011 of the Regional Trial Court, Branch 32, San Pablo City, in Criminal Case No. 15407 is hereby **AFFIRMED**.

SO ORDERED.[12]

A motion for reconsideration was filed by the petitioners, but the same was denied by the CA on February 21, 2014.

Hence, this petition, raising the following errors:

A) THE CA COMMITTED AN ERROR OF LAW AND GRAVE ABUSE OF DISCRETION IN AFFIRMING THE RTC DECISION FINDING NORMA GAMARO GUILTY OF THE CRIME OF ESTAFA UNDER SECTION 1(b), ARTICLE 315 OF THE REVISED PENAL

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[11] *Id.* at 50-51. (Emphasis in the original)

[12] *Id.* at 56. (Emphasis in the original)

CODE DESPITE THE INFORMATION ACCUSING HER OF THE CRIME OF ESTAFA UNDER PARAGRAPH 2(a) ARTICLE 315 OF THE REVISED PENAL CODE IN GRAVE VIOLATION OF THE PETITIONER'S CONSTITUTIONAL RIGHT TO BE INFORMED OF THE CHARGE AGAINST HER;

B) THE CA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT SUSTAINED THE FINDINGS OF THE RTC DESPITE THE FACT THAT IT (RTC) RELIED ON THE FINDINGS ON THE PROCEEDINGS IN THE ADMINISTRATIVE CASE WITH SSS AGAINST NORMA GAMARO;

C) THE CA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT SUSTAINED THE FINDINGS OF THE RTC DESPITE THE FACT THAT IT (RTC) CONSIDERED THE TESTIMONY OF PROSECUTION WITNESS ATTY. BALDEO DESPITE CONFLICT OF INTEREST IN THAT SHE (ATTY. BALDEO) GAVE NORMA GAMARO ADVISE REGARDING HER CASE; AND

D) THE CA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT UPHELD THE FINDINGS OF FACT OF THE RTC THAT NORMA GAMARO RECEIVED THE SUBJECT JEWELRIES DESPITE THE INCOMPETENT AND CONTRADICTORY EVIDENCE OF THE PROSECUTION ITSELF.[13]

The first issue for resolution is whether a conviction for the crime of Estafa under a different paragraph from the one charged is legally permissible.

The Bill of Rights of the 1987 Constitution guarantees some rights to every person accused of a crime, among them the right to be informed of the nature and cause of the accusation, *viz.*:

Section 14. (1) **No person shall be held to answer for a criminal offense without due process of law.**

(2) **In all criminal prosecutions, the accused** shall be presumed innocent until the contrary is proved, and **shall enjoy the right** to

[13] *Id.* at 18-19.

be heard by himself and counsel, **to be informed of the nature and cause of the accusation against him**, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.[14]

The constitutional provision requiring the accused to be "informed of the nature and cause of the accusation against him" is for him to adequately and responsively prepare his defense. The prosecutor is not required, however, to be absolutely accurate in designating the offense by its formal name in the law. It is hornbook doctrine that what determines the real nature and cause of the accusation against an accused is the actual recital of facts stated in the information or complaint and not the caption or preamble of the information or complaint nor the specification of the provision of law alleged to have been violated, they being conclusions of law.[15]

The controlling words of the information are found in its body. Accordingly, the Court explained the doctrine in *Flores v. Hon. Layosa*[16] as follows:

The Revised Rules of Criminal Procedure provides that an information shall be deemed sufficient if it states, among others, the designation of the offense given by the statute and the acts of omissions complained of as constituting the offense. However, the Court has clarified in several cases that the designation of the offense, by making reference to the section or subsection of the statute punishing, it [sic] is not controlling; **what actually determines the nature and character of the crime charged are the facts alleged in the information**. The Court's ruling in *U.S. v. Lim San* is instructive:

> x x x Notwithstanding the apparent contradiction between caption and body, we believe that we ought to say and hold that the characterization of the crime by the fiscal in the caption of the

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[14] Emphasis ours.

[15] *Espino v. People,* 713 Phil. 377, 385-386 (2013).

[16] 479 Phil. 1020 (2004).

> information is immaterial and purposeless, and that the facts stated in the body of the pleading must determine the crime of which the defendant stands charged and for which he must be tried. The establishment of this doctrine is permitted by the Code of Criminal Procedure, and is thoroughly in accord with common sense and with the requirements of plain justice x x x.[17]

In the instant case, the crime of estafa charged against petitioners is defined and penalized by Article 315, paragraph 2 (a) of the Revised Penal Code, *viz.*:

> Article 315. *Swindling (estafa).* Any person who shall defraud another by any of the means mentioned herein below shall be punished by:
>
> *1st.* The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.
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> *2nd.*The penalty of *prision correccional* in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;
>
> *3rd.* The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period if such amount is over 200 pesos but does not exceed 6,000 pesos; and
>
> *4th.* By *arresto mayor* in its maximum period, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:
>
> x x x x x x x x x

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[17] *Flores v. Hon. Layosa, supra*, at 1033-1034.

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) **By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.**[18]

The elements of the said crime are as follows: (1) there must be a false pretense, fraudulent acts or fraudulent means; (2) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) the offended party must have relied on the false pretense, fraudulent act or fraudulent means and was thus induced to part with his money or property; and (4) as a result thereof, the offended party suffered damage.[19]

However, the crime petitioner Norma Gamaro was convicted of is estafa under Article 315, paragraph 1(b) of the Revised Penal Code:

Article 315. *Swindling (estafa).*

x x x the fraud be committed by any of the following means:

1. With unfaithfulness or abuse of confidence, namely:

x x x x x x x x x

(b) **By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property**.

x x x x x x x x x[20]

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[18] Emphasis ours.

[19] *Franco v. People,* 658 Phil. 600, 613 (2011).

[20] Emphasis ours.

The elements of estafa under Article 315, paragraph 1(b) are as follows: (1) that money, goods, or other personal properties are received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same; (2) that there is a misappropriation or conversion of such money or property by the offender or a denial of the receipt thereof; (3) that the misappropriation or conversion or denial is to the prejudice of another; and (4) that there is a demand made by the offended party on the offender.[21]

The question then is whether the facts in the Information do indeed constitute the crime of which petitioner Norma Gamaro was convicted. In other words, was the RTC correct in convicting her of estafa under Article 315, paragraph 1(b) instead of paragraph 2(a)?

What is of vital importance to determine is whether or not petitioner Norma Gamaro was convicted of a crime charged in the Information as embraced within the allegations contained therein. A reading of the Information yields an affirmative answer. The Information filed sufficiently charges estafa through misappropriation or conversion. Fineza entrusted petitioner Norma Gamaro with the pieces of jewelry amounting to ₱2,292,519.00 on the condition that the same will be sold for profit. Petitioner Norma Gamaro was under obligation to turn over the proceeds of the sale to Fineza. However, instead of complying with the obligation, she pawned the pieces of jewelry to M. Lhuillier Pawnshop where petitioner Umali worked as Branch Manager and kept the proceeds thereof to the damage and prejudice of Fineza.

Paragraph 1(b) provides liability for estafa committed by misappropriating or converting to the prejudice of another money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to

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[21] *D'Aigle v. People*, 689 Phil. 480, 489 (2012); *Asejo v. People,* 555 Phil. 106, 112-113 (2007).

return the same, even though that obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property. This, at least, is very clearly shown by the factual allegations of the Information.[22]

There is, therefore, no ambiguity in the Information. The factual allegations therein sufficiently inform petitioners of the acts constituting their purported offense and satisfactorily allege the elements of estafa by misappropriation. Petitioners are fully apprised of the charge against them and for them to suitably prepare their defense. Therefore, petitioner Norma Gamaro was not deprived of any constitutional right. She was sufficiently apprised of the facts that pertained to the charge and conviction for estafa, because the RTC has the discretion to read the Information in the context of the facts alleged. In the case of *Flores v. Hon. Layosa,*[23] We explained the rationale behind this discretion in this manner:

> From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. Whatever its purpose may be, its result is to enable the accused to vex the court and embarrass the administration of justice by setting up the technical defense that the crime set forth in the body of the information and proved in the trial is not the crime characterized by the fiscal in the caption of the information. **That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth.** If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute. The designation of the crime by name in the caption of the information from the facts alleged in the body of that pleading is a conclusion of law made by the fiscal. In the designation of the crime the accused never has a real interest until the trial has ended. For his full and

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[22] *Espino v. People, supra* note 15, at 391.

[23] *Supra* note 16.

complete defense he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights... **If he performed the acts alleged, in the manner, stated, the law determines what the name of the crime is and fixes the penalty therefore. It is the province of the court alone to say what the crime is or what it is named x x x.**[24]

Also, the prosecution was able to prove the crime of estafa under paragraph 1(b). As held by the CA, Fineza positively and categorically testified on the transaction that transpired between her and petitioners and accused Rowena Gamaro. The failure to account upon demand, for funds or property held in trust, is circumstantial evidence of misappropriation. As mentioned, petitioner Norma Gamaro failed to account for, upon demand, the jewelry which was received by her in trust. This already constitutes circumstantial evidence of misappropriation or conversion to petitioner's own personal use. The failure to return upon demand the properties which one has the duty to return is tantamount to appropriating the same for his own personal use.[25] As in fact, in this case, Fineza, herself redeemed the pieces of jewelry using her own money.

The essence of this kind of *estafa* is the appropriation or conversion of money or property received to the prejudice of the entity to whom a return should be made. The words convert and misappropriate connote the act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right. In proving the element of conversion or misappropriation, a legal presumption of misappropriation arises when the accused fails to deliver the proceeds of the sale or to return the items to be sold and fails to give an account of their whereabouts.[26]

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[24] *Id*. at 1034. (Emphases supplied.)

[25] *D'Aigle v. People*, *supra* note 21, at 491.

[26] *Pamintuan v. People,* 635 Phil. 514, 522 (2010).

Thus, petitioners having been adequately informed of the nature and cause of the accusation against them, petitioner Norma Gamaro could be convicted of the said offense, the same having been proved.

Furthermore, We are not persuaded by the argument raised by petitioners that the testimony of prosecution witness Atty. Baldeo violated the rule on "privileged communication between attorney and client" for the reason that Atty. Baldeo allegedly gave petitioner Norma Gamaro "advise" regarding her case.

The factors essential to establish the existence of the privilege are:

(1) There exists an attorney-client relationship, or a prospective attorney-client relationship, and it is by reason of this relationship that the client made the communication;

(2) The client made the communication in confidence;

(3) The legal advice must be sought from the attorney in his professional capacity.[27]

The mere relation of attorney and client does not raise a presumption of confidentiality. The client must intend the communication to be confidential. A confidential communication refers to information transmitted by voluntary act of disclosure between attorney and client in confidence and by means which, so far as the client is aware, discloses the information to no third person other than one reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it was given. The communication made by a client to his attorney must not be intended for mere information, but for the purpose of seeking legal advice from his attorney as to his rights or obligations. The communication must have been transmitted by a client to his attorney for the purpose of seeking legal advice.[28]

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[27] *Mercado v. Atty. Vitriolo,* 498 Phil. 49, 58-60 (2005).

[28] *Id.* at 60.

Applying the rules to the case at bar, We hold that the evidence on record fails to substantiate petitioner's allegation. The testimony of Atty. Baldeo consisted merely of observations that petitioner Norma Gamaro was indeed engaged in the business of selling jewelry supplied by private complainant Fineza. We note that the testimony is merely corroborative to the testimony of private complainant Fineza. Atty. Baldeo is an officemate of petitioner Norma Gamaro. Atty. Baldeo testified primarily on the fact that she personally saw petitioner Gamaro, on several occasions, showing the jewelry for sale to their officemates. As in fact, Atty. Baldeo was offered to buy the pieces of jewelry on some instances, and she was told by petitioner Norma Gamaro that the pieces of jewelry came from Fineza.[29]

The aforesaid testimony of Atty. Baldeo was considered by the RTC to dispute the defense of petitioner Norma Gamaro that she had no involvement in the jewelry business of her daughters:

> Thus, based on the testimony of Atty. Baldeo in this case and in the aforementioned administrative case, accused Norma Gamaro's defense of denial of her participation in the business transaction involving the sale of jewelry supplied by private complainant, fall flat on its face.[30]

Lastly, the argument of petitioner Norma Gamaro that the RTC erred in finding that she was the one who received the pieces of jewelry is a finding of fact. It is a well-entrenched doctrine that factual findings of the trial court, especially when affirmed by the appellate court, are accorded the highest degree of respect and are considered conclusive between the parties. Though jurisprudence recognizes highly meritorious exceptions, none of them obtain herein which would warrant a reversal of the challenged Decision.[31]

We stick to the findings of fact of the RTC which was sustained by the CA that petitioner Norma Gamaro received some pieces of jewelry from Fineza, and accused Rowena Gamaro pawned

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[29] *Rollo*, p. 96.

[30] *Id.* at 97.

[31] *D'Aigle v. People*, *supra* note 21, at 492.

the jewelry entrusted to them by Fineza which is a clear act of misappropriation, thus:

> x x x. The attempt of the defense to exculpate Norma and Josephine through the testimony of Frederick San Diego is understandable. The argument, however, that it was Frederick San Diego, upon instructions of RowenaGamaro who pledged the jewelry, without the knowledge of Norma or Josephine is unavailing. The records show that Frederick San Diego is not only a mere nephew of Norma, and cousin to Rowena and Josephine, but also the messenger and collector of Rowena, who had knowledge of the fact that Rowena's partner was the private complainant, Frederick San Diego also knew that the private complainant went to the house of Norma asking the missing jewelry.
>
> As earlier stressed, some of the jewelry were delivered by the private complainant to Norma Gamaro, not Rowena Gamaro. Yet the defense admits that Frederick San Diego pledged the same pieces of jewelry to M. Lhuillier Pawnshop, Cebuana Lhuillier, and the owner of Collette's upon instructions of Rowena Gamaro. Clearly then, Norma turned over the said jewelry to Rowena with knowledge that they will be pledged to the pawnshops and to the owner of Collette's. To hold otherwise would run counter to human nature and experience.[32]

It must be stressed that the prosecution offered in evidence the eighteen (18) index cards given by accused Rowena Gamaro to Fineza stating the pieces of jewelries that were given to them by Fineza, with the corresponding appraised values. The due dates of the checks issued in favor of Fineza (Exhibits "F" to "F-7"and "F-11" "F-27") were also indicated on the index cards.[33] The pieces of jewelry were pawned to various pawnshops and individuals, instead of offering them for sale. Hence, petitioner Norma Gamaro failed to return the jewelry to the damage and prejudice of Fineza. She even offered her house and lot to Fineza as payment for the jewelry.

We agree with the findings of the RTC and the CA that petitioner Norma Gamaro was guilty beyond reasonable doubt

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[32] *Rollo*, pp. 95-96. (Emphasis supplied.)

[33] *Id.* at 94.

of *estafa.* The CA ruled that the prosecution's evidence showed that Fineza entrusted the possession of the jewelry to petitioner. The CA observed that the prosecution duly proved petitioner's misappropriation by showing that she failed to return the diamond ring upon demand. That misappropriation took place was strengthened when petitioner Norma Gamaro informed Fineza that they pawned the jewelry, an act that ran counter to the terms of their business agreement.

Likewise, as to the civil liability of Umali despite her acquittal, We note the declaration of the RTC that Umali had knowledge as to who owned the jewelry pledged with M. Lhuiller Pawnshop. The RTC further pointed out that Umali was part of the business transaction between Norma Gamaro and Rowena Gamaro with Fineza, as she too signed the Joint Solidary Account Agreement with Banco Filipino to enable them to open a checking account. It was against this account that Norma and Rowena Gamaro drew the checks that they issued to guarantee the share of Fineza from the proceeds of the sale of the pieces of jewelry. These findings support the conclusion of the CA that Umali's acquittal was based on reasonable doubt. Hence, Umali's civil liability was not extinguished by her discharge.[34] We, therefore, concur with the findings of the CA:

> On the other hand, We likewise find appellant Umali civilly liable to private complainant Fineza. As may be recalled, appellant Umali was exonerated from the crime of *estafa.* Notwithstanding, she is not entirely free from any liability towards private complainant Fineza. It has been held that an acquittal based on reasonable doubt that the accused committed the crime charged does not necessarily exempt her from civil liability where a mere preponderance of evidence is required.[35] There is no question that the evidence adduced by the prosecution is preponderant enough to sustain appellant Umali's civil liability. Accordingly, We agree with the court *a quo's* ratiocination in this wise:

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[34] *Dr. Lumantas v. Spouses Calapiz,* 724 Phil. 248, 253 (2014); *Manantan v. Court of Appeal*, 403 Phil. 298, 310 (2001).

[35] *Manahan, Jr. v. Court of Appeals,* 325 Phil. 484, 499 (1996).

> "What militates against the posture of Josephine is the admission by Frederick that it was Rowena Gamaro who instructed him to pledge the jewelry to M. Lhuiller Pawnshop. If this were true, then, with more reason Josephine had knowledge as to who owns the jewelry. It may well be pointed out, as earlier stated, that Josephine is part of the business transaction between Norma and Rowena with the private complainant, as she too signed the Joint Solidary Account Agreement with Banco Filipino purposely to enable them to open a checking account, and it was against this account that Norma and Rowena drew the checks that they issued to guarantee the share of Joan from the proceeds of the sale of the jewelry. It follows then that Josephine also knows beforehand who owns the jewelry pledged with her *(sic)* M. Lhuillier Pawnshop Branch. x x x"

With the foregoing premises considered, We sustain the court *a quo's* ruling that herein appellants be held jointly and solidarily liable to herein private complainant Fineza. Thus, there is no cogent reason to depart from the ruling of the court *a quo*.[36]

There is no reason for this Court to review the findings when both the appellate and the trial courts agree on the facts.[37] We, therefore, adopt the factual findings of the lower courts in totality, bearing in mind the credence lent to their appreciation of the evidence.

WHEREFORE, the petition is **DENIED.** The Decision of the Court of Appeals dated November 25, 2013, and its Resolution dated February 21, 2014 in CA-G.R. CR No. 34454 are **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), Bersamin,[*] and *Mendoza, JJ.,* concur.

Leonen, J., on official leave.

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[36] *Rollo*, pp. 55-56.

[37] *Espino v. People, supra* note 15, at 392.

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 1, 2014.

THIRD DIVISION

[G.R. No. 223035. February 27, 2017]

REYNALDO Y. SUNIT, *petitioner, vs.* **OSM MARITIME SERVICES, INC., DOF OSM MARITIME SERVICES A/S, and CAPT. ADONIS B. DONATO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; DISABILITY BENEFITS; PERMANENT TOTAL DISABILITY; WHERE THE DISABILITY AND INCAPACITY TO RESUME WORK CONTINUES FOR MORE THAN 120 OR 240 DAYS, DEPENDING ON THE NEED FOR FURTHER MEDICAL TREATMENT, THE DISABILITY SHOULD BE CONSIDERED PERMANENT AND TOTAL.— Permanent disability is defined as the inability of a worker to perform his job for more than 120 days (or 240 days, as the case may be), regardless of whether or not he loses the use of any part of his body. Total disability, meanwhile, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do. Under Article 192(c)(1) of the Labor Code, **disability that is both permanent and total** x x x is defined as "temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules." x x x While We have ruled that Dr. Bathan is not bound to render his assessment within the 120/240 day period, and that the said period is inconsequential and has no application on the third doctor, petitioner's disability and incapacity to resume working clearly continued for more than 240 days. Applying Article 192 (c)(1) of the Labor Code, petitioner's disability should be considered permanent and total despite the Grade 9 disability grading. This conclusion is in accordance with *Kestrel [Shipping Co., Inc. v. Munar]*, wherein this Court underscored that if partial and permanent injuries or disabilities would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under

legal contemplation, totally and permanently disabled x x x. It was likewise proved that petitioner's disability persisted beyond the 240-day period and he was even declared unfit to work by the third doctor himself. As noted by the NLRC, petitioner failed to have gainful employment for 499 days reckoned from the time he arrived on October 6, 2012 until Dr. Bathan conducted his assessment due to his injuries. Moreover, Dr. Bathan's inconclusive assessment and petitioner's prolonged disability only served to underscore that the company-designated doctor himself failed to render a definitive assessment of petitioner's disability.

2. **ID.; ID.; ID.; THE 120/240-DAY PERIOD FOR ASSESSING THE DEGREE OF DISABILITY ONLY APPLIES TO THE COMPANY-DESIGNATED DOCTOR, NOT THE THIRD DOCTOR.—** [I]t is the **company-designated** doctor who is given the responsibility to make a conclusive assessment on the degree of the seafarer's disability and his capacity to resume work **within 120/240 days**. The parties, however, are free to disregard the findings of the company doctor, as well as the chosen doctor of the seafarer, in case they cannot agree on the disability gradings issued and jointly seek the opinion of a third-party doctor pursuant to Section 20 (A)(3) of the 2010 POEA-SEC x x x. The x x x provision clearly does not state a specific period within which the **third doctor** must render his or her disability assessment. This is only reasonable since the parties may opt to resort to a third opinion even during the conciliation and mediation stage to abbreviate the proceedings, which usually transpire way beyond the 120/240 day period for medical treatment. The CA, thus, correctly held that the 240-day period for assessing the degree of disability only applies to the company-designated doctor, and not the third doctor.

3. **ID.; ID.; ID.; THE APPOINTED THIRD-PARTY PHYSICIAN MUST ARRIVE AT A DEFINITE AND CONCLUSIVE ASSESSMENT OF THE SEAFARER'S DISABILITY OR FITNESS TO RETURN TO WORK BEFORE HIS OPINION CAN BE VALID AND BINDING BETWEEN THE PARTIES.—** Indeed, the employer and the seafarer are bound by the disability assessment of the third-party physician in the event that they choose to appoint one. Nonetheless, similar to what is required of the company-designated doctor, **the**

appointed third-party physician must likewise arrive at a definite and conclusive assessment of the seafarer's disability or fitness to return to work before his or her opinion can be valid and binding between the parties. x x x A **final and definite disability assessment** is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.

4. ID.; ID.; ID.; IN DISABILITY COMPENSATION, IT IS THE INCAPACITY TO WORK RESULTING IN THE IMPAIRMENT OF ONE'S EARNING CAPACITY WHICH IS COMPENSATED, NOT THE INJURY.— As petitioner was actually unable to work even after the expiration of the 240-day period and there was no final and conclusive disability assessment made by the third doctor on his medical condition, it would be inconsistent to declare him as merely permanently and partially disabled. It should be stressed that a total disability does not require that the employee be completely disabled, or totally paralyzed**. In disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.**

APPEARANCES OF COUNSEL

Maria Carmen De Jesus Villacrusis for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

Nature of the Case

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the June 10, 2015 Decision[1]

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[1] *Rollo*, pp. 15-25. Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Priscilla J. Baltazar-Padilla and Agnes Reyes-Carpio.

and February 10, 2016 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 138268, which reversed and set aside the August 29, 2014 Decision of the National Labor Relations Commission (NLRC).

Factual Antecedents

On June 18, 2012, respondent OSM Maritime Services, Inc. (OSM Maritime), the local agent of respondent DOF OSM Maritime Services A/S, hired petitioner Reynaldo Sunit (Sunit) to work onboard the vessel *Skandi Texel* as Able Body Seaman for three (3) months with a monthly salary of $689. Deemed incorporated in the employment contract is the 2010 Philippine Overseas Employment Agency Standard Employment Contract (POEA-SEC) and the NIS AMOSUP CBA.

During his employment, petitioner fell from the vessel's tank approximately 4.5 meters high and suffered a broken right femur. He was immediately brought to a hospital in the Netherlands for treatment and was eventually repatriated due to medical reason. Upon his arrival in Manila on October 6, 2012, he immediately underwent a post-employment medical examination and treatment for his injury at the Metropolitan Medical Center, wherein the company-designated physician diagnosed him to be suffering from a "Fractured, Right Femur; S/P Intramedullary Nailing, Right Femur."

On January 13, 2013, after 92 days of treatment, the company-designated doctor issued a Medical Report[3] giving petitioner an interim disability Grade of 10.[4] Said medical report reads:

MEDICAL REPORT:

Patient's range of motion of the right hip has improved although patient still ambulates with a pair of axillary crutches.

Pain is at 1-2/10 at the right hip.

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[2] *Id*. at 27-28.

[3] *Id*. at 176.

[4] *Id*. at 16.

Based on his present condition, his closest interim assessment is Grade 10 – irregular union of fracture in a thigh.

Dissatisfied with the company doctor's January 13, 2013 medical report, petitioner sought the opinion of another doctor, Dr. Venancio P. Garduce (Dr. Garduce),[5] who recommended a disability grade of three (3) in his Medical Report dated February 6, 2013.

After further medical treatment, petitioner was assessed with a final disability grade of 10 by the company physician of respondent OSM Maritime, Dr. William Chuasuan, Jr. (Dr. Chuasuan), on February 15, 2013.[6]

Respondents offered petitioner disability benefit of $30,225 in accordance with the disability Grade 10 that the company-designated doctor issued. Petitioner, however, refused the offer and filed a claim for a disability benefit of USD$150,000.00 based on the POEA-SEC and NIS AMOSUP CBA.[7]

During the pendency of the case with the Labor Arbiter (LA), the parties agreed to consult Dr. Lyndon L. Bathan (Dr. Bathan) for a third opinion. Dr. Bathan issued a Medical Certificate recommending a Grade 9 disability pursuant to the Schedule of Disabilities and Impediments under the POEA-SEC. In addition, Dr. Bathan stated therein that petitioner is "not yet fit to work." Dr. Bathan's certificate states:

This is to certify that SUNIT, REYNALDO consulted the undersigned on 17 Feb. 2014 at Faculty Medical Arts Building, PGH Compound, Taft Ave., Manila.

He was diagnosed to have:

FEMORAL FRACTURE S/P INTRAMEDULLARY NAILING (2012); S/P BONE GRAFTING

Patient is Gr. 9 according to POEA Schedule of disability. Patient is not yet fit to work and should undergo rehabilitation.[8]

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[5] *Id*.

[6] *Id*. at 177.

[7] *Id*.

[8] *Id*. at 97.

Ruling of the LA

Pursuant to the Grade 9 disability issued by Dr. Bathan, the LA awarded petitioner disability benefit in the amount of $13,060. The dispositive portion of its Decision[9] dated April 28, 2014 reads:

> WHEREFORE, respondents OSM Maritime Services, Inc., DOF OSM Maritime Services A/S, [are] hereby ordered to pay in solidum complaint's disability benefit in the amount of US$13,060.00 or its Philippine Peso equivalent at the time of payment.
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> SO ORDERED.

Aggrieved, petitioner appealed to the NLRC.

Ruling of the NLRC

On August 29, 2014, the NLRC rendered a Decision modifying the LA's findings and awarded petitioner permanent and total disability benefit in the amount of $150,000. The NLRC reasoned that petitioner is considered as totally and permanently disabled since Dr. Bathan, the third doctor, issued the Grade 9 disability recommendation after the lapse of the 240-day period required for the determination of a seafarer's fitness to work or degree of disability under the POEA-SEC. The NLRC disposed of the case in this wise:

> WHEREFORE, premises considered, the complainant's appeal is hereby GRANTED.
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> Accordingly, the Decision dated 28 April 2014 of Labor Arbiter Michelle P. Pagtalunan is hereby REVERSED and SET ASIDE ordering respondents, jointly and severally, to pay complainant Reynaldo Y. Sunit, the amount of ONE HUNDRED FIFTY THOUSAND US DOLLARS ($150,000.00) representing permanent total disability benefits plus ten percent (10%) thereof as attorney's fees.
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> All other claims are DISMISSED for lack of merit.
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> SO ORDERED.

Respondents moved for reconsideration of the decision, but the NLRC denied the same in its Resolution dated October 22, 2014.

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[9] *Id.* at 90-92.

Respondents questioned the NLRC's decision in a petition for certiorari before the CA.

Ruling of the CA

The CA granted the respondents' petition and reinstated the LA's ruling in its Decision dated June 10, 2015, the dispositive portion of which reads:

> WHEREFORE, the instant *Petition for Certiorari* is GRANTED. The August 29, 2014 *Decision* and the October 22, 2014 *Resolution* of public respondent National Labor Relations Commission are REVERSED and SET ASIDE. The April 28, 2014 Decision of the Labor Arbiter is REINSTATED.
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> SO ORDERED.

In reversing the NLRC, the appellate court held that the 240-day period for assessing the degree of disability only applies to the company-designated doctor, and not to the third doctor. It is only upon the company-designated doctor's failure to render a final assessment of petitioner's condition within 240 days from repatriation that he will be considered permanently and totally disabled and, hence, entitled to maximum disability benefit. In petitioner's case, the company-designated doctor was able to make a determination of his disability within the 240-day period; hence, he is not considered as totally and permanently disabled despite the opinion of the third doctor having been rendered after the lapse of 240 days from repatriation.

The CA further added that the extent of disability, whether total or partial, is determined, not by the number of days that petitioner could not work, but by the disability grading the doctor recognizes based on his resulting incapacity to work and earn his wages. Thus, the mere fact that petitioner was incapacitated to work for a period exceeding 120 days does not automatically entitle him to total and permanent disability benefits. Concomitantly, the CA stressed that the recommendation of Dr. Bathan of Grade 9 disability and his determination that the latter's disability is partial and not total are binding on the parties.

Petitioner moved for the reconsideration of the adverted decision, but the CA denied the same in its Resolution dated February 10, 2016.

Hence, this petition.

Issues

Petitioner anchors his plea for the reversal of the assailed Decision on the following issues:

I.

WHETHER OR NOT THE CA COMMITTED SERIOUS ERROR OF LAW IN AWARDING A PARTIAL DISABILITY OF GRADE 9 TO PETITIONER; AND

II.

WHETHER OR NOT THE CA ERRED IN DISMISSING PETITIONERS' CLAIMS FOR DAMAGES AND ATTORNEY'S FEES DESPITE RESPONDENTS' COMMISSION OF BAD FAITH IN THE PERFORMANCE OF THEIR OBLIGATIONS.

The primordial question to be resolved is whether petitioner is entitled to permanent and total disability benefits.

The parties do not dispute that petitioner's injury was work-related and that he is entitled to disability compensation. The disagreement, however, lies on the degree of disability and amount of benefits that petitioner is entitled.

Petitioner bases his entitlement to total and permanent disability benefits on the failure of the company-designated doctor to arrive at a definitive assessment of his disability. Petitioner particularly assails Dr. Chuasuan's assessment of Grade 10 disability since he still required further medical rehabilitation, as affirmed by Dr. Bathan, the third doctor.

In addition, petitioner points at the inconsistency between the Grade 9 disability issued by Dr. Bathan in his certification and the latter's remark therein that petitioner was still "not fit to work and should undergo further rehabilitation." As noted by the NLRC, petitioner's condition prevented him from

acquiring gainful employment for 499 days reckoned from the time he arrived on October 6, 2012 until Dr. Bathan examined him on February 17, 2014.[10] Petitioner alleges that he could no longer resume sea service without risk to himself and to others due to the limited physical exertion brought about by his injury, and is permanently unfit for further sea duty.

In their Comment, respondents argue that the 240-day rule does not apply to the case since the company-designated doctor timely assessed petitioner; that the 240-day period only applies to the assessment of the company-designated doctor, and not to the third doctor's opinion. Even assuming that the 240 days limitation applies to the third doctor, the parties validly extended the period for assessment since it was at petitioner's instance that a third doctor was appointed. By seeking this relief, respondents insist that petitioner agreed to whatever disability grading the third doctor will issue.

In addition, respondents maintain that petitioner's disability should be based on the Schedule of Disability under Section 32 of the 2010 POEA-SEC and should not be based on the number of days of treatment or the number of days in which sickness allowance is paid, citing Section 20 (A)(6) of the 2010 POEA-SEC. It is respondents' position that the amendments therein require the injury or illness to be compensated based solely on the Schedule of Disability Gradings in Section 32 of the Contract, and that the duration of treatment or payment of sickness allowance should be discounted when determining the applicable disability grading.

Moreover, respondents refuse to acknowledge that they are liable for 100% disability compensation under the CBA, arguing that the CBA does not contain a permanent unfitness clause, but merely mandates that the disability shall be based solely on the disability grading provided under Section 32 of the POEA-SEC, echoing Section 20(A)(6).

The Court's Ruling

The Court resolves to grant the petition.

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[10] *Id.* at 45.

Permanent disability is defined as the inability of a worker to perform his job for more than 120 days (or 240 days, as the case may be), regardless of whether or not he loses the use of any part of his body. Total disability, meanwhile, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do.[11]

Under Article 192(c)(1) of the Labor Code, **disability that is both permanent and total disability** is defined as "temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules."[12] Similarly, Rule VII, Section 2(b) of the Amended Rules on Employees' Compensation (AREC) provides:

> (b) A **disability is total and permanent** if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules. (emphasis supplied)

The adverted Rule X of the AREC, which implements Book IV of the Labor Code, states in part:

> Sec. 2. Period of entitlement. - (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days **except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days** from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability

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[11] *Hanseatic Shipping Philippines, Inc. v. Ballon*, G.R. No. 212764, September 9, 2015; *Olidana v. Jebsens Maritime, Inc.*, G.R. No. 215313, October 21, 2015; *MaerskFilipinas Crewing, Inc. v. Mesina*, G.R. No. 200837, June 5, 2013, 697 SCRA 601, 619, citing *Fil-Star Maritime Corporation v. Rosete*, 677 Phil. 262, 273-274 (2011).

[12] Now Article 198 (c) (1) based on the renumbered Labor Code, per DOLE Department Advisory No. 01, Series of 2015.

as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System. (emphasis supplied)

Section 20 (A)(3) of the POEA-SEC, meanwhile, provides that:

SECTION 20. COMPENSATION AND BENEFITS

COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off **until he is declared fit to work or the degree of disability has been assessed by the company-designated physician**. x x x

The case of *Vergara v. Hammonia Maritime Services, Inc.*[13] harmonized the provisions of the Labor Code and the AREC with Section 20 (B)(3)[14] of the POEA-SEC (now Section 20 [A][3] of the 2010 POEA-SEC). Synthesizing the abovementioned provisions, *Vergara* clarifies that the 120-day period given to the employer to assess the disability of the seafarer may be extended to a maximum of 240 days:

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[13] G.R. No. 172933, October 6, 2008, 567 SCRA 610.

[14] B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows: x x x

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days. For this purpose, the seafarer shall submit himself to a postemployment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits. If a doctor appointed by the seafarer disagrees with the assessment, a

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists**. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.

The 120/240-day period in Article 192 (c)(1) and Rule X, Section 2 of the AREC only applies to the company-designated doctor

From the above-cited laws, it is the **company-designated** doctor who is given the responsibility to make a conclusive assessment on the degree of the seafarer's disability and his capacity to resume work **within 120/240 days**. The parties, however, are free to disregard the findings of the company doctor, as well as the chosen doctor of the seafarer, in case they cannot agree on the disability gradings issued and jointly seek the opinion of a third-party doctor pursuant to Section 20 (A)(3) of the 2010 POEA-SEC:

SECTION 20. COMPENSATION AND BENEFITS

COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

3. x x x

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third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (emphasis supplied)

The above-quoted provision clearly does not state a specific period within which the **third doctor** must render his or her disability assessment. This is only reasonable since the parties may opt to resort to a third opinion even during the conciliation and mediation stage to abbreviate the proceedings, which usually transpire way beyond the 120/240 day period for medical treatment. The CA, thus, correctly held that the 240-day period for assessing the degree of disability only applies to the company-designated doctor, and not the third doctor.

The third doctor's assessment of the extent of disability must be definite and conclusive in order to be binding between the parties

Indeed, the employer and the seafarer are bound by the disability assessment of the third-party physician in the event that they choose to appoint one. Nonetheless, similar to what is required of the company-designated doctor, **the appointed third-party physician must likewise arrive at a definite and conclusive assessment of the seafarer's disability or fitness to return to work before his or her opinion can be valid and binding between the parties**.

We point to our discussion in *Kestrel Shipping Co., Inc. v. Munar*,[15] underscoring that the assessment of the company-designated physician of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days must be **definite**, viz:

Moreover, **the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days**. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled. (emphasis supplied)

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[15] G.R. No. 198501, January 30, 2013, 689 SCRA 795.

Jurisprudence is replete with cases bearing similar pronouncements of this Court. In *Fil-Star Maritime Corporation v. Rosete*,[16] We concluded that the company-designated doctor's certification issued within the prescribed periods must be a definite assessment of the seafarer's fitness to work or disability:

> For the courts and labor tribunals, determining whether a seafarer's fitness to work despite suffering an alleged partial injury generally requires resort to the assessment and certification issued within the 120/240-day period by the company-designated physician. Through such certification, a seafarer's fitness to resume work or the degree of disability can be known, unless challenged by the seafarer through a second opinion secured by virtue of his right under the POEA-SEC. **Such certification, as held by this Court in numerous cases, must be a definite assessment of the seafarer's fitness to work or permanent disability**. As stated in Oriental Shipmanagement Co., Inc. v. Bastol, the company-designated doctor must declare the seaman fit to work or assess the degree of his permanent disability. Without which, the characterization of a seafarer's condition as permanent and total will ensue because the ability to return to one's accustomed work before the applicable periods elapse cannot be shown. (emphasis supplied)

In *Carcedo v. Maine Marine Phils., Inc.*,[17] We ruled that the company-designated physician's disability assessment was not definitive since the seafarer continued to require medical treatments thereafter. Thus, because the doctor failed to issue a final assessment, the disability of the seafarer therein was declared to be permanent and total.

In *Fil-Pride Shipping Company, Inc. v. Balasta*,[18] We declared that the company-designated physician must arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days pursuant to Article 192 (c)(l) of the Labor Code and Rule X, Section 2 of the AREC. If he fails to do so and the seafarer's medical condition remains unresolved, the latter shall be deemed totally and permanently disabled. Thus,

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[16] G.R. No. 192686, November 23, 2011.

[17] G.R. No. 203804, April 15, 2015.

[18] G.R. No. 193047, March 3, 2014.

We considered the failure of the company doctor to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the said period in holding that the seafarer was totally and permanently disabled.

A **final and definite disability assessment** is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.

Due to the abovestated reasons, We see it fit to apply the same prerequisite to the appointed third doctor before the latter's disability assessment will be binding on the parties.

In the case at bench, despite the disability grading that Dr. Bathan issued, petitioner's medical condition remained unresolved. For emphasis, Dr. Bathan's certification is reproduced hereunder:

> This is to certify that SUNIT, REYNALDO consulted the undersigned on 17 Feb. 2014 at Faculty Medical Arts Building, PGH Compound, Taft Ave., Manila.
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> x x x x x x x x x
>
> **Patient is Gr. 9 according to POEA Schedule of disability**. **Patient is not yet fit to work and should undergo rehabilitation**.[19] (emphasis supplied)

The language of Dr. Bathan's assessment brooks no argument that no final and definitive assessment was made concerning petitioner's disability. If it were otherwise, Dr. Bathan would not have recommended that he undergo further rehabilitation. Dr. Bathan's assessment of petitioner's degree of disability, therefore, is still inconclusive and indefinite.

Petitioner's disability is permanent and total despite the Grade 9 partial disability that Dr. Bathan issued since his incapacity to work lasted for more than 240 days from his repatriation

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[19] *Rollo*, p. 97.

Petitioner was repatriated on October 6, 2012. After undergoing medical treatment, the company-designated doctor issued petitioner an interim Grade 10 disability on January 13, 2013. Petitioner was then issued with a final Grade 10 disability by the company-designated doctor on February 15, 2013.

Prior to the February 15, 2013 assessment, petitioner consulted the opinion of a second doctor, Dr. Garduce, who recommended a Grade 3 disability.

Both parties then consulted a third doctor to assess petitioner's degree of disability, who assessed petitioner with a Grade 9 partial disability on February 17, 2014, **499 days from his repatriation**. In addition to the partial disability grading, Dr. Bathan likewise assessed petitioner as **unfit to work** and **recommended him to undergo further rehabilitation**.

While We have ruled that Dr. Bathan is not bound to render his assessment within the 120/240 day period, and that the said period is inconsequential and has no application on the third doctor, petitioner's disability and incapacity to resume working clearly continued for more than 240 days. Applying Article 192 (c)(1) of the Labor Code, petitioner's disability should be considered permanent and total despite the Grade 9 disability grading.

This conclusion is in accordance with *Kestrel*,[20] wherein this Court underscored that if partial and permanent injuries or disabilities would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally and permanently disabled:

> Indeed, under Section 32 of the POEA-SEC, only those injuries or disabilities that are classified as Grade 1 may be considered as total and permanent. **However, if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation,**

[20] *Supra* note 15.

totally and permanently disabled. In other words, an impediment should be characterized as partial and permanent not only under the Schedule of Disabilities found in Section 32 of the POEA-SEC but should be so under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code. That while the seafarer is partially injured or disabled, he is not precluded from earning doing the same work he had before his injury or disability or that he is accustomed or trained to do. Otherwise, if his illness or injury prevents him from engaging in gainful employment for more than 120 or 240 days, as the case may be, he shall be deemed totally and permanently disabled. (emphasis supplied)

In determining whether a disability is total or partial, what is crucial is whether the employee who suffered from disability could still perform his work notwithstanding the disability he met. A permanent partial disability presupposes a seafarer's fitness to resume sea duties before the end of the 120/240-day medical treatment period despite the injuries sustained, and works on the premise that such partial injuries did not disable a seafarer to earn wages in the same kind of work or similar nature for which he was trained.[21]

To reiterate, the company doctor or the appointed third-party physician must arrive at a definite and conclusive assessment of the seafarer's disability or fitness to return to work before his or her opinion can be valid and binding between the parties. Dr. Bathan, whose opinion should have bound the parties despite the lapse of the 120/240 day period, did not make such definite and conclusive assessment.

It was likewise proved that petitioner's disability persisted beyond the 240-day period and he was even declared unfit to work by the third doctor himself. As noted by the NLRC, petitioner failed to have gainful employment for 499 days reckoned from the time he arrived on October 6, 2012 until Dr. Bathan conducted his assessment[22] due to his injuries. Moreover, Dr. Bathan's

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[21] *Belchem Philippines, Inc. v. Zafra, Jr.*, G.R. No. 204845, June 15, 2015, citing *Fil-Star Maritime Corporation v. Rosete,* G.R. No. 192686, November 23, 2011.

[22] *Rollo*, p. 102.

inconclusive assessment and petitioner's prolonged disability only served to underscore that the company-designated doctor himself failed to render a definitive assessment of petitioner's disability.

As petitioner was actually unable to work even after the expiration of the 240-day period and there was no final and conclusive disability assessment made by the third doctor on his medical condition, it would be inconsistent to declare him as merely permanently and partially disabled. It should be stressed that a total disability does not require that the employee be completely disabled, or totally paralyzed.[23] **In disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity**.[24]

In view of the foregoing circumstances, petitioner is considered permanently and totally disabled, and should be awarded the corresponding disability benefits.

At this juncture, it bears to recapitulate the procedural requisites under the rules and established jurisprudence where the parties opt to resort to the opinion of a third doctor:

First, according to the POEA-SEC[25] and as established by *Vergara*,[26] when a seafarer sustains a work-related illness or injury

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[23] *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, G.R. No. 211882, July 29, 2015.

[24] *Eyana v. Philippine Transmarine Carriers, Inc., et al.*, G.R. No. 193468, January 28, 2015.

[25] Section 20.COMPENSATON AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. x x x

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

[26] G.R. No. 172933, October 6, 2008, 567 SCRA 629.

while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician.

Second, if the seafarer disagrees with the findings of the company doctor, then he has the right to engage the services of a doctor of his choice. If the second doctor appointed by the seafarer disagrees with the findings of the company doctor, and the company likewise disagrees with the findings of the second doctor, then a third doctor may be agreed jointly between the employer and the seafarer, whose decision shall be final and binding on both of them.

It must be emphasized that the language of the POEA-SEC is clear in that **both the seafarer and the employer** must mutually agree to seek the opinion of a third doctor. In the event of disagreement on the services of the third doctor, the seafarer has the right to institute a complaint with the LA or NLRC.

Third, despite the binding effect of the third doctor's assessment, a dissatisfied party may institute a complaint with the LA to contest the same on the ground of evident partiality, corruption of the third doctor, fraud, other undue means,[27] lack of basis to support the assessment, or being contrary to law or settled jurisprudence.

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[27] Similar to the grounds for vacating an award under Republic Act No. 876:

Section 24. *Grounds for vacating award.* - In any one of the following cases, the court must make an order vacating the award upon the petition of any party to the controversy when such party proves affirmatively that in the arbitration proceedings:

(a) The award was procured by corruption, fraud, or other undue means; or

(b) That there was evident partiality or corruption in the arbitrators or any of them; or

(c) That the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; that one or more of the arbitrators was disqualified to act as such under section nine hereof, and wilfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or

(d) That the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.

x x x x x x x x x

Petitioner is entitled to attorney's fees

Considering that petitioner was forced to litigate and incur expenses to protect his right and interest, petitioner is entitled to a reasonable amount of attorney's fees, pursuant to Article 2208(8).[28] The Court notes, however, that respondents have not shown to act in gross and evident bad faith in refusing to satisfy petitioner's demands, and even offered to pay him disability benefits, although in a reduced amount. Thus, the Court finds the award of attorney's fees in the amount of $1,000 as reasonable.[29]

WHEREFORE, premises considered, the petition is **GRANTED**. The June 10, 2015 Decision and February 10, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 138268 are **REVERSED** and **SET ASIDE**. Respondents are ordered to jointly and severally pay petitioner Reynaldo Y. Sunit the amount of $150,000 or its equivalent amount in Philippine currency at the time of payment, representing total and permanent disability benefits, plus $1,000, or its equivalent in Philippine currency, as attorney's fees.

SO ORDERED.

Bersamin, Jardeleza, and *Caguioa,*[*] *JJ.,* concur.

Reyes, J., on leave.

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[28] Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x x x x x x

(8) In actions for indemnity under workmen 's compensation and employer's liability laws;

[29] *Iloreta v. Philippine Transmarine Carriers, Inc*., G.R. No. 183908, December 4, 2009, 607 SCRA 796; *Eyana v. Philippine Transmarine Carriers, Inc., et al.*, G.R. No. 193468, January 28, 2015; *Olaybal v. OSG Shipmanagement Manila, Inc. and OSG Shipmanagement [UK] Ltd*., G.R. No. 211872, June 22, 2015.

* Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

SECOND DIVISION

[A.M. No. P-17-3634. March 1, 2017]
(Formerly A.M. No. 16-04-94-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ENRIQUE I. ALFONSO, Court Stenographer III, Regional Trial Court, Branch 52, Manila,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SC-AC No. 14-02; HABITUAL ABSENTEEISM; TO INSPIRE PUBLIC RESPECT FOR THE JUSTICE SYSTEM, COURT OFFICIALS AND EMPLOYEES SHOULD AT ALL TIMES STRICTLY OBSERVE OFFICIAL TIME, AS PUNCTUALITY IS A VIRTUE, ABSENTEEISM AND TARDINESS ARE IMPERMISSIBLE.— By reason of the nature and functions of their office, officials and employees of the judiciary must faithfully observe the constitutional canon that public office is a public trust. This duty calls for the observance of prescribed office hours and the efficient use of official time for public service, if only to recompense the Government, and, ultimately, the people who shoulder the cost of maintaining the judiciary. Thus, to inspire public respect for the justice system, court officials and employees should at all times strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible.

2. ID.; ID.; ID.; ID.; ID.; FREQUENT ABSENCES WITHOUT AUTHORIZATION ARE INIMICAL TO PUBLIC SERVICE; HEADS OF DEPARTMENT OF AGENCIES MAY VERIFY THE VALIDITY OF ILL HEALTH CLAIMS OF AN EMPLOYEE AND, IF NOT SATISFIED WITH THE REASON GIVEN, SHOULD DISAPPROVE THE APPLICATION FOR SICK LEAVE.— Frequent absences without authorization are inimical to public service. Even with the fullest measure of sympathy and patience, the Court cannot act otherwise since the exigencies of government service cannot

and should never be subordinated to purely human equations. SC-AC No. 14-02, issued on March 18, 2002, provides the policy of the Court with respect to habitual absenteeism xxx. After a judicious study of the records, the Court agrees with the OCA that the absences of Alfonso were unauthorized, thus, he is liable for habitual absenteeism. Both the March 19, 2016 and March 31, 2016 letters of the ELD informed Alfonso that his sick leave applications for October, November and December 2015 were disapproved by Judge Mas, the head of his station. Under SC-AC No. 14-02, heads of department of agencies may verify the validity of ill health claims of an employee and, if not satisfied with the reason given, should disapprove the application for sick leave. As Judge Mas was not satisfied with Alfonso's reason for applying for sick leave for the days he was absent during the period concerned, he is to be considered a habitual absentee.

3. ID.; ID.; ID.; ID.; ID.; WHERE A PENALTY LESS PUNITIVE WOULD SUFFICE, WHATEVER MISSTEPS MAY HAVE BEEN COMMITTED OUGHT NOT TO BE METED A CONSEQUENCE SO SEVERE; IMPOSITION OF A MITIGATED PENALTY OF SUSPENSION OF ONE (1) MONTH FROM SERVICE FOR HABITUAL ABSENTEEISM CONSIDERED JUST AND FAIR IN CASE AT BAR.— In case of habitual absenteeism, SC-AC No. 14-02 and the Uniform Rules on Administrative Cases in the Civil Service impose the penalty of suspension of six months and one (1) day to one (1) year for the first offense and dismissal for the second offense. In the determination of the penalty to be imposed, however, attendant circumstances such as physical fitness, habituality and length of service in the government may be considered. In several cases, the Court has mitigated the imposable penalty for special reasons. It has been ruled that where a penalty less punitive would suffice, whatever missteps may have been committed ought not to be meted a consequence so severe. The law is concerned not only with the employee but with his family as well. Unemployment brings untold hardship and sorrow to those dependent on the wage-earner. x x x. Here, the Court finds that the penalty against Alfonso must be mitigated due to several reasons. *First*, Alfonso attempted to comply with the requirements of a valid leave application by attaching his medical certificates thereto. Unfortunately, they lacked sufficient

details to support the application for sick leaves. *Second*, from the records of Alfonso, it does not appear that he has committed any other infraction in his years of employment. *Lastly*, the offense committed by Alfonso neither involve any corruption nor bad faith; rather, he was merely negligent in failing to substantiate his leave applications with comprehensive medical certificates. In fine, a mitigated penalty of suspension of one (1) month from service is just and fair.

D E C I S I O N

MENDOZA, *J.*:

In its Certification,[1] dated April 20, 2016, the Employees' Leave Division (*ELD*), Office of Administrative Services (*OAS*), Office of the Court Administrator (*OCA*), stated that respondent Enrique I. Alfonso (*Alfonso*), Court Stenographer III, Regional Trial Court, Branch 52, Manila (*RTC*), incurred unauthorized absences for 2015 as follows:

Months	Absences
October 5, 6, 9, 15, 16, 19, 20, 30	7.5 days
November 2, 3, 5, 6, 9, 23, 24, 25, 26, 27	10 days
December 1-4,7-11, 15, 17-18,21-22,28-29	15.5 days

In its Letter,[2] dated March 19, 2016, the ELD informed Alfonso that his sick leave applications filed for October 2015 were not recommended for approval by RTC Presiding Judge Ana Marie T. Mas (*Judge Mas*). Further, it cited the Evaluation and Recommendation,[3] dated January 14, 2016, of the Supreme Court Medical and Dental Services (*SC-MDS*) which also did not recommend the approval of the said sick leave applications. The SC-MDS noticed that the attached medical certificates issued by Dr. Giancarlo Arandia (*Dr. Arandia*) of the Medical Center Manila showed no history of his confinement or required him to take sick leaves on the aforementioned dates in October 2015.

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[1] *Rollo*, p. 2.

[2] *Id.* at 3.

[3] *Id.* at 6.

In another Letter,[4] dated March 31, 2016, the ELD noticed that his sick leave applications filed for November and December 2015 were likewise not recommended for approval by Judge Mas. It referred to another Evaluation and Recommendation,[5] dated March 30, 2016, of the SC-MDS which also did not recommend the approval of the said sick leave applications. The SC-MDS opined that Alfonso's sick leave applications contained insufficient medical documents, such as the results of the diagnostic tests and medical certificates requiring him to rest for 20 days due to his medical condition.

In the Indorsement,[6] dated May 5, 2016, the OCA directed Alfonso to submit his comment on the certification.

In his Comment,[7] dated June 14, 2016, Alfonso denied that he failed to attach the required medical certificates to his sick leave applications. He bewailed that Judge Mas transmitted the denial of his sick leave applications to the Court without informing him that he lacked documents. Alfonso explained that he was informed of the unfavorable action on his applications only on May 23, 2016.

The OCA Recommendation

In its Report, dated November 15, 2016, the OCA recommended that the ELD's certification be noted and re-docketed as a regular administrative matter; and that Alfonso be found guilty of habitual absenteeism and be suspended from the service for six (6) months and one (1) day without pay, with a stern warning that a repetition of the similar infraction would be dealt with more severely.

The OCA opined that Alfonso committed habitual absenteeism under the Supreme Court Administrative Circular (*SC-AC*) No. 14-2002 because he had unauthorized absences exceeding the

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[4] *Id.* at 4.

[5] *Id.* at 5.

[6] *Id.* at 7.

[7] *Id.* at 8.

allowable 2.5 days monthly leave credits for at least three (3) months in a semester. It stressed that the lack of medical certificate was not the issue but the insufficiency of the medical certificates to support or justify his repeated absences. The OCA emphasized that the attached medical certificates did not state that Alfonso's medical condition required him to be absent from work.

Hence, the case was elevated to the Court.

The Court's Ruling

The Court adopts the findings of the OCA but modifies the penalty imposed.

By reason of the nature and functions of their office, officials and employees of the judiciary must faithfully observe the constitutional canon that public office is a public trust. This duty calls for the observance of prescribed office hours and the efficient use of official time for public service, if only to recompense the Government, and, ultimately, the people who shoulder the cost of maintaining the judiciary. Thus, to inspire public respect for the justice system, court officials and employees should at all times strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible.[8]

Frequent unauthorized absences without authorization are inimical to public service. Even with the fullest measure of sympathy and patience, the Court cannot act otherwise since the exigencies of government service cannot and should never be subordinated to purely human equations.[9]

SC-AC No. 14-02, issued on March 18, 2002, provides the policy of the Court with respect to habitual absenteeism, to wit:

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[8] *Re: Abdon*, 574 Phil. 287, 290 (2008).

[9] *Re: Ypil*, 555 Phil. 1, 7-8 (2007).

A. HABITUAL ABSENTEEISM

1. An officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the leave law for at least three (3) months in a semester or at least three (3) consecutive months during the year; xxx

In this case, Alfonso incurred 7.5 days of absences in October 2015; 10 days of absences in November 2015; and 15.5 days of absences in December 2015. Certainly, these absences are in excess of the allowable 2.5 days monthly leave credits for at least three (3) months in a semester. Nevertheless, mere absenteeism is insufficient to be administratively liable; rather, the absences incurred must be unauthorized.

After a judicious study of the records, the Court agrees with the OCA that the absences of Alfonso were unauthorized, thus, he is liable for habitual absenteeism. Both the March 19, 2016 and March 31, 2016 letters of the ELD informed Alfonso that his sick leave applications for October, November and December 2015 were disapproved by Judge Mas, the head of his station. Under SC-AC No. 14-02, heads of department of agencies may verify the validity of ill health claims of an employee and, if not satisfied with the reason given, should disapprove the application for sick leave.[10] As Judge Mas was not satisfied with Alfonso's reason for applying for sick leave for the days he was absent during the period concerned, he is to be considered a habitual absentee.

In addition, the January 14, 2016 and March 30, 2016 evaluation and report of the SC-MDS state that the medical certificates issued by Dr. Arandia, Alfonso's physician, neither showed history of confinement nor required Alfonso to take sick leaves on the aforementioned dates in October, November

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[10] 2. In case of claim of ill health, heads of department of agencies are encouraged to verify the validity of such claim and, if not satisfied with the reason given, should disapprove the application for sick leave. On the other hand, cases of employees who absent themselves from work before approval of their application should be disapproved outright;

and December 2015. It was also provided therein that Alfonso was last seen by Dr. Arandia on July 2015 and there was no follow-up thereafter. Likewise, the SC-MDS noted that the sick leave applications of Alfonso did not contain sufficient medical documents such as the results of diagnostics and medical tests. Thus, these documents prove that the absences of Alfonso were inexcusable.

Alfonso's defense — that he attached his medical certificates to his sick leave applications — does not deserve merit. As emphasized by the OCA, it is not the lack of medical certificates that rendered the absences of Alfonso unauthorized; instead, it is the failure of these medical certificates to justify his absences. To reiterate, the medical certificates did not indicate that he should have rested for the days indicated in his sick leave applications. His comment does not even mention the medical condition he was suffering, its nature, effect, gravity or his required medications that would warrant a long period of sick leaves. In fine, Alfonso's defense is insufficient to justify his habitual absenteeism.

As to the administrative penalty, the Court is of the view that the recommended penalty of the OCA must be modified. In case of habitual absenteeism, SC-AC No. 14-02 and the Uniform Rules on Administrative Cases in the Civil Service impose the penalty of suspension of six months and one (1) day to one (1) year for the first offense and dismissal for the second offense. In the determination of the penalty to be imposed, however, attendant circumstances such as physical fitness, habituality and length of service in the government may be considered.[11]

In several cases, the Court has mitigated the imposable penalty for special reasons.[12] It has been ruled that where a penalty less punitive would suffice, whatever missteps may have been

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[11] *Re: Abdon*, *supra* note 8, at 291-292.

[12] *Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the First and Second Semesters of 2003*, A.M. No. 00-06-09-SC, March 16, 2004, 425 SCRA 508.

committed ought not to be meted a consequence so severe. The law is concerned not only with the employee but with his family as well. Unemployment brings untold hardship and sorrow to those dependent on the wage-earner.[13]

In *Re: Abdon*,[14] the court employee therein was held guilty of habitual absenteeism. Nevertheless, the said employee did not deliberately absent himself from work as he submitted applications for leave, with corresponding medical certificates, but they were disapproved because he had insufficient leave credits. Thus, the Court found it proper to mitigate the imposable penalty to a suspension of one (1) month from service.

Here, the Court finds that the penalty against Alfonso must be mitigated due to several reasons. *First*, Alfonso attempted to comply with the requirements of a valid leave application by attaching his medical certificates thereto. Unfortunately, they lacked sufficient details to support the application for sick leaves. *Second*, from the records of Alfonso, it does not appear that he has committed any other infraction in his years of employment. *Lastly*, the offense committed by Alfonso neither involve any corruption nor bad faith; rather, he was merely negligent in failing to substantiate his leave applications with comprehensive medical certificates. In fine, a mitigated penalty of suspension of one (1) month from service is just and fair.

WHEREFORE, Enrique I. Alfonso, Court Stenographer III, Regional Trial Court, Branch 52, Manila, is found **GUILTY** of habitual absenteeism and is **SUSPENDED** from service for one (1) month without pay, with a **STERN WARNING** that a repetition of the same or a similar infraction shall be dealt with more severely.

SO ORDERED.

Carpio, Acting C.J. (Chairperson), *Peralta*, and *Jardeleza, JJ.*, concur.

Leonen, J., on official leave.

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[13] *Almira v. B.F. Goodrich Philippines, Inc.*, 157 Phil. 110 (1974).

[14] *Supra* note 8.

THIRD DIVISION

[G.R. No. 179749. March 1, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDDIE BARTE *y* MENDOZA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE COURT IS NOT LIMITED TO THE ASSIGNED ERRORS, BUT CAN CONSIDER AND CORRECT ERRORS THOUGH UNASSIGNED AND EVEN REVERSE THE DECISION ON GROUNDS OTHER THAN THOSE THE PARTIES RAISED AS ERRORS.— In this jurisdiction, we convict the accused only when his guilt is established beyond reasonable doubt. Conformably with this standard, we are mandated as an appellate court to sift the records and search for every error, though unassigned in the appeal, in order to ensure that the conviction is warranted, and to correct every error that the lower court has committed in finding guilt against the accused. In this instance, therefore, the Court is not limited to the assigned errors, but can consider and correct errors though unassigned and even reverse the decision on grounds other than those the parties raised as errors.

2. ID.; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTIES OF PUBLIC OFFICERS CAN BE OVERTURNED IF EVIDENCE IS PRESENTED TO PROVE THAT THE PUBLIC OFFICERS WERE EITHER NOT PROPERLY PERFORMING THEIR DUTY, OR THAT THEY WERE INSPIRED BY ANY IMPROPER MOTIVE.— Courts are cognizant of the presumption of regularity in the performance of duties of public officers. This presumption can be overturned if evidence is presented to prove either of two things, namely: (1) that they were not properly performing their duty, or (2) that they were inspired by any improper motive. xxx. It is a matter of judicial notice that buy-bust operations are "susceptible to police abuse, the most notorious of which is its use as a tool

for extortion." The high possibility of abuse was precisely the reason why the procedural safeguards embodied in Section 21 of R.A. No. 9165 have been put up as a means to minimize, if not eradicate such abuse. The procedural safeguards not only protect the innocent from abuse and violation of their rights but also guide the law enforcers on ensuring the integrity of the evidence to be presented in court.

3. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT No. 9165, AS AMENDED); ILLEGAL SALE AND POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— In the prosecution of the crime of selling a dangerous drug, the following elements must be proven, to wit: (1) the identities of the buyer, seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. On the other hand, the essential requisites of illegal possession of dangerous drugs that must be established are the following, namely: (1) the accused was in possession of the dangerous drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the dangerous drug.

4. ID.; ID.; ID.; ID.; THERE MUST BE PROOF NOT ONLY OF THE ELEMENTS OF POSSESSION OR ILLEGAL SALE, BUT THE FACT THAT THE SUBSTANCE POSSESSED OR ILLEGALLY SOLD WAS THE VERY SUBSTANCE PRESENTED IN COURT MUST ALSO BE ESTABLISHED WITH THE SAME EXACTING DEGREE OF CERTITUDE AS THAT REQUIRED SUSTAINING A CONVICTION.— Inasmuch as the dangerous drug itself constitutes the very *corpus delicti* of both offenses, its identity and integrity must definitely be shown to have been preserved. This means that on top of the elements of possession or illegal sale, the fact that the substance possessed or illegally sold was the very substance presented in court must be established with the same exacting degree of certitude as that required sustaining a conviction. The prosecution must account for each link in the chain of custody of the dangerous drug, from the moment of seizure from the accused until it was presented in court as proof of the *corpus delicti*. In short, the chain of custody requirement ensures that unnecessary doubts respecting the identity of the evidence are minimized if not altogether removed.

5. ID.; ID.; SECTION 21 THEREOF; CHAIN OF CUSTODY RULE; NON-COMPLIANCE WITH THE PROCEDURAL SAFEGUARDS IS FATAL BECAUSE IT CAST DOUBT ON THE INTEGRITY OF THE EVIDENCE PRESENTED IN COURT AND DIRECTLY AFFECTED THE VALIDITY OF THE BUY-BUST OPERATION, AND THE TESTIMONIES OF THE POLICE OFFICERS.— [W]e regard and declare as unwarranted the RTC's position that the absence of proof showing the compliance by the arresting lawmen with the procedure outlined under Section 21 of RA No. 9165 was not fatal to the entrapment. Such non-compliance with the procedural safeguards under Section 21 was fatal because it cast doubt on the integrity of the evidence presented in court and directly affected the validity of the buy-bust operation. It put into serious question whether the sachet of *shabu* had really come from the accused-appellant, and whether the sachet of *shabu* presented in court was the same sachet of *shabu* obtained from the accused-appellant at the time of the arrest. Testimonies provided by the police officers and the presumption of regularity in the performance of their duties did not override the non-compliance with the procedural safeguards instituted by our laws. Indeed, anything short of observance and compliance by the arresting lawmen with what the law required meant that the former did not regularly perform their duties. The presumption of regularity in the performance of their duties then became inapplicable. As such, the evidence of the State did not overturn the presumption of innocence in favor of the accused-appellant.

6. ID.; ID.; ID.; ID.; ANY DEPARTURE FROM THE PRESCRIBED PROCEDURAL REQUIREMENTS MUST BE REASONABLY JUSTIFIED, AND MUST FURTHER BE SHOWN NOT TO HAVE AFFECTED THE INTEGRITY AND EVIDENTIARY VALUE OF THE CONFISCATED CONTRABAND, OTHERWISE, THE NON-COMPLIANCE CONSTITUTES AN IRREGULARITY THAT CAST REASONABLE DOUBT ON THE IDENTITY OF THE *CORPUS DELICTI*. — [A]lthough non-compliance with the prescribed procedural requirements would not automatically render the seizure and custody of the contraband invalid, that is true only when there is a justifiable ground for such non-compliance, and the integrity and evidentiary value of the seized items are properly preserved. Any departure from the prescribed

procedure must then still be reasonably justified, and must further be shown not to have affected the integrity and evidentiary value of the confiscated contraband. Otherwise, the non-compliance constitutes an irregularity, a red flag, so to speak, that cast reasonable doubt on the identity of the *corpus delicti.*

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

BERSAMIN, *J.*:

When there is failure to comply with the requirements for proving the chain of custody in the confiscation of contraband in a drug buy-bust operation, the State has the obligation to credibly explain such non-compliance; otherwise, the proof of the *corpus delicti* is doubtful, and the accused should be acquitted for failure to establish his guilt beyond reasonable doubt.

The Case

Under review is the decision promulgated on September 26, 2006,[1] whereby the Court of Appeals (CA) affirmed the decision rendered on May 18, 2004 by the Regional Trial Court (RTC), Branch 28, in Mandaue City convicting the accused-appellant of violating Section 5, Article II of Republic Act No. 9165, as amended, and sentencing him accordingly.[2]

Antecedents

The accused-appellant was charged in the RTC with a violation of Section 5, Article II of R.A. No. 9165, as amended, following

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[1] *Rollo*, pp. 4-8; penned by Associate Justice Agustin S. Dizon (retired), and concurred in by Associate Justice Pampio A. Abarintos (retired) and Associate Justice Priscilla Baltazar-Padilla.

[2] CA *rollo*, pp. 15-23; penned by Judge Marilyn Lagura-Yap.

his arrest for selling a quantity of *shabu* worth ₱100.00 to a police officer-poseur buyer in the evening of August 10, 2002 during a buy-bust operation conducted in Consuela Village, Mandaue City.

PO2 Rico Cabatingan, a witness for the Prosecution, declared that he and other police officers conducted the buy-bust operation at about 9:30 in the evening of August 10, 2002 on the basis of information received to the effect that the accused-appellant was engaged in the sale of *shabu*.[3] During the pre-operation conference, PO2 Cabatingan was designated as the poseur buyer, and his back-up officers were PO2 Baylosis and PO3 Ompad. P/Insp. Grado provided the buy-bust money with marked serial number to PO2 Cabatingan.[4] The buy-bust team then proceeded to Consuela Village at about 9:10 of that evening on board a Suzuki multicab driven by PO3 Ompad. At the target area, PO2 Cabatingan met with the accused-appellant, and informed the latter that he wanted to buy *shabu* worth "a peso." Upon the accused-appellant's assent to his offer, PO2 Cabatingan handed the buy-bust money to him, and in turn the latter gave to him a small sachet with white colored contents. PO2 Cabatingan then gave the pre-arranged signal by touching his head. The other officers rushed forward and identified themselves to the accused-appellant as policemen. They frisked and arrested him, and brought him to the police station.

PO2 Cabatingan identified the sachet marked "EBM", which contained the white substance.[5] He confirmed the request for laboratory examination. He delivered the confiscated substance, along with the request, to the crime laboratory, which later on found the substance to be positive for the presence of methamphetamine hydrochloride, a dangerous drug.

PO2 Cabatingan also identified the ₱100.00 bill used as the buy-bust money. He asserted that he, PO3 Ompad and PO2

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[3] *Id.* at 15.

[4] *Id.* at 15-16.

[5] *Id.* at 16.

Baylosis had conducted prior surveillance of the accused-appellant for three nights, by which they had confirmed that he was really selling *shabu*. The results of their surveillance also confirmed that the subject of their surveillance was the same person referred to by their informant.[6]

In his defense, the accused-appellant declared that he was sitting alone near the chapel of Basak, Mandaue City near their house in Consuela Village at around 9:30 in the evening of August 10, 2002 when police officers suddenly came and arrested him. In undertaking his arrest, the officers pointed their guns at him and forced him to go with them. They brought him to the police precinct on a Suzuki multicab, and upon their reaching the station, the arresting officers searched his person and found his ID inside his wallet. He was not informed of the reason for his arrest. He was subsequently detained. The arresting officers only informed him of the charges against him on the next day.[7]

As stated, on May 18, 2004, the RTC rendered its decision[8] convicting him as charged. It gave full credence to the testimony of PO2 Cabatingan, and ruled that the Prosecution thereby established that the accused-appellant had sold *shabu* to PO2 Cabatingan,[9] to wit:

> The court is aware of the procedure under Section 21, Article II of the new law on physical inventory and photograph of the seized drug in the presence of the accused or his representative or counsel, a media representative and the Department of Justice and any elected official who must all sign the inventory and furnished with a copy thereof The same provision of law also directs the conduct of a qualitative examination (in addition to the quantitative examination), ocular inspection of the seized drug with 72 hours from filing of the criminal case and its destruction, saving only a representative sample, within 24 hours thereafter in the presence of the accused and the persons enumerated therein.

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[6] *Id.* at 17.

[7] *Id.* at 19.

[8] *Supra* note 2.

[9] *Id.* at 20-21.

Although no evidence has been produced to prove compliance of the procedure, the Court believes that it is not fatal to the State's cause on the validity of the entrapment. *"In deciding cases, the Supreme Court does not matter-of-factly apply and interpret laws in a vacuum, laws are interpreted always in the context of peculiar factual situation of each case."* The lack of readiness of the government to implement these measures may not be an excuse for the non-observance of the procedure but the same factual reality should not also be the sole basis to overcome the presumption of regularity of performance of police duties where the testimonies of the policemen concerned, PO2 Cabatingan and PO2 Baylosis, have been found to be credible. Section 21 relates to the procedure after the accused has been arrested. It would be too sweeping to conclude that the failure to comply with the instructions under Section 21 would necessarily result to a finding of irregularity in the actual conduct of the buy-bust operation.

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WHEREFORE, this JUDGMENT is hereby rendered finding the accused EDDIE BARTE Y MENDOZA guilty beyond reasonable doubt for sale of shabu, a dangerous drug. Pursuant to Section 5, Article II of RA 9165, this Court hereby imposes upon EDDIE MENDOZA, the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos [₱500,000.00] together with the accessory penalties under Section 35, Article II thereof.

The pack of shabu is hereby ordered confiscated for proper disposition.

IT IS SO ORDERED.[10]

On appeal, the CA promulgated the assailed decision on September 26, 2006,[11] holding and decreeing:

In the instant case, it can well be stressed that the paramount consideration in transactions involving sale of prohibited drugs was how the buy bust operation was conducted. It is worthy and important to note as the trial court noted that the arresting officers acted within the bounds of law and jurisprudence in the conduct of the buy-bust

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[10] *Id.* at 22-23.

[11] *Supra* note 1, at 7-8.

operation, which led to the appellant's arrest. Consequently, the lower court properly and fittingly relied on the legal presumption that the official duties had been regularly performed by the police officers and for which reason the conviction of the accused has to be adjudged.

In essence, we find no cogent reason to disturb or reverse the conclusion of the trial court that the appellant's guilt had been proven beyond reasonable doubt.

WHEREFORE, the Decision dated 18 May 2004 is hereby **AFFIRMED in toto.**

SO ORDERED.

After the CA denied the accused-appellant's motion for reconsideration on August 8, 2007,[12] he now appeals.

Issue

Was the guilt of the accused-appellant for the crime charged proved beyond reasonable doubt?

Ruling of the Court

After thorough review, we consider the appeal to be impressed with merit. Thus, we acquit the accused-appellant.

In this jurisdiction, we convict the accused only when his guilt is established beyond reasonable doubt. Conformably with this standard, we are mandated as an appellate court to sift the records and search for every error, though unassigned in the appeal, in order to ensure that the conviction is warranted, and to correct every error that the lower court has committed in finding guilt against the accused.[13] In this instance, therefore, the Court is not limited to the assigned errors, but can consider

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[12] *Rollo,* pp. 10-11.

[13] *Reyes v. Court of Appeals*, G.R. No. 180177, April 18, 2012, 670 SCRA 148, 157; *People v. Feliciano*, G.R. Nos. 127759-60, September 24, 2001, 365 SCRA 613, 629; *People v. Quimzon*, G.R. No. 133541, April 14, 2004, 427 SCRA 261, 281; *People v. Cula*, G.R. No. 133146, March 28, 2000, 329 SCRA 101, 116.

and correct errors though unassigned and even reverse the decision on grounds other than those the parties raised as errors.[14]

Courts are cognizant of the presumption of regularity in the performance of duties of public officers. This presumption can be overturned if evidence is presented to prove either of two things, namely: (1) that they were not properly performing their duty, or (2) that they were inspired by any improper motive.[15] This case sprang from the buy-bust operation conducted by several police officers against the accused-appellant based on the tip from a caller whose identification was only through the alias of *Ogis*. Surveillance was made following such tip, but the same was unrecorded and no other proof was presented to corroborate the policemen's conclusion that the man known as *Ogis* was the same man they were looking for during the surveillance.

It is a matter of judicial notice that buy-bust operations are "susceptible to police abuse, the most notorious of which is its use as a tool for extortion."[16] The high possibility of abuse was precisely the reason why the procedural safeguards embodied in Section 21 of R.A. No. 9165 have been put up as a means to minimize, if not eradicate such abuse. The procedural safeguards not only protect the innocent from abuse and violation

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[14] *Epifanio v. People*, G.R. No. 157057, June 26, 2007, 1 SCRA 552, 560; *Pangonorom v. People*, G.R. No. 143380, April 11, 2005, 455 SCRA 211, 220; *People v. Saludes*, G.R. No. 144157, June 10, 2003, 403 SCRA 590, 597-598; *People v. Ulit*, G.R. Nos. 131799-801, February 23, 2004, 423 SCRA 374, 389; *People v. Lucero*, G.R. Nos. 102407-08, March 26, 2001, 355 SCRA 93, 101-102; *Eusebio-Calderon v. People*, G.R. No. 158495, October 21 , 2004, 441 SCRA 137, 146; *People v. Alzona*, G.R. No. 132029, July 30, 2004, 435 SCRA 461, 471; *People v. Taño*, G.R. No. 133572, May 5, 2000, 331 SCRA 449, 460; *People v. Llaguno*, G.R. No. 91262, January 28, 1998, 285 SCRA 124, 147; *People v. Atop*, G.R. Nos. 124303-05, February 10, 1998, 286 SCRA 157, 174.

[15] *People v. Remarata*, G.R. No. 147230, April 29, 2003, 401 SCRA 753, 754.

[16] *People v. Garcia*, G.R. No. 173480, February 25, 2009, 580 SCRA 259, 267.

of their rights but also guide the law enforcers on ensuring the integrity of the evidence to be presented in court.

In the prosecution of the crime of selling a dangerous drug, the following elements must be proven, to wit: (1) the identities of the buyer, seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. On the other hand, the essential requisites of illegal possession of dangerous drugs that must be established are the following, namely: (1) the accused was in possession of the dangerous drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the dangerous drug.[17]

Inasmuch as the dangerous drug itself constitutes the very *corpus delicti* of both offenses, its identity and integrity must definitely be shown to have been preserved. This means that on top of the elements of possession or illegal sale, the fact that the substance possessed or illegally sold was the very substance presented in court must be established with the same exacting degree of certitude as that required sustaining a conviction.[18] The prosecution must account for each link in the chain of custody of the dangerous drug, from the moment of seizure from the accused until it was presented in court as proof of the *corpus delicti*. In short, the chain of custody requirement ensures that unnecessary doubts respecting the identity of the evidence are minimized if not altogether removed.[19]

The chain of custody as an important procedural safeguard is defined under Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, as follows:

> Chain of Custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the

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[17] *People v. Enriquez* , G.R. No. 197550, September 25, 2013, 706 SCRA 337, 349-350.

[18] *People v. Adrid*, G.R. No. 201845, March 6, 2013, 692 SCRA 683, 697.

[19] *Supra* note 17 at 350.

time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

The necessity of maintaining an unbroken chain of custody and the mechanics of the custodial chain requirement were explained in *Malillin v. People*,[20] thus:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.
>
> While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering—without regard to whether the same is advertent or otherwise not—dictates the level of strictness in the application of the chain of custody rule.

Based on the foregoing, we regard and declare as unwarranted the RTC's position that the absence of proof showing the

[20] G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632-633.

compliance by the arresting lawmen with the procedure outlined under Section 21 of RA No. 9165 was not fatal to the entrapment. Such non-compliance with the procedural safeguards under Section 21 was fatal because it cast doubt on the integrity of the evidence presented in court and directly affected the validity of the buy-bust operation. It put into serious question whether the sachet of *shabu* had really come from the accused-appellant, and whether the sachet of *shabu* presented in court was the same sachet of *shabu* obtained from the accused- appellant at the time of the arrest. Testimonies provided by the police officers and the presumption of regularity in the performance of their duties did not override the non-compliance with the procedural safeguards instituted by our laws. Indeed, anything short of observance and compliance by the arresting lawmen with what the law required meant that the former did not regularly perform their duties. The presumption of regularity in the performance of their duties then became inapplicable. As such, the evidence of the State did not overturn the presumption of innocence in favor of the accused-appellant.

Furthermore, although non-compliance with the prescribed procedural requirements would not automatically render the seizure and custody of the contraband invalid, that is true only when there is a justifiable ground for such non-compliance, and the integrity and evidentiary value of the seized items are properly preserved. Any departure from the prescribed procedure must then still be reasonably justified, and must further be shown not to have affected the integrity and evidentiary value of the confiscated contraband. Otherwise, the non-compliance constitutes an irregularity, a red flag, so to speak, that cast reasonable doubt on the identity of the *corpus delicti*.[21]

Here, the State's agents who entrapped the accused-appellant and confiscated the dangerous drug from him did not tender any justifiable ground for the non-compliance with the requirement of establishing each link in the chain of custody from the time of seizure to the time of presentation. The

[21] *Supra* note 17, at 353-354.

conclusion that the integrity and evidentiary value of the *shabu* confiscated were consequently not preserved became unavoidable. The failure to prove the chain of custody should mean, therefore, that the Prosecution did not establish beyond reasonable doubt that the sachet of *shabu* presented during the trial was the very same one delivered by the accused-appellant to the poseur buyer.

WHEREFORE, the Court **ACQUITS** accused **EDDIE BARTE** *y* **MENDOZA** of the violation of Section 5, Article II of Republic Act No. 9165, as amended, for failure to prove his guilt beyond reasonable doubt; and **DIRECTS** the Director of the Bureau of Corrections to forthwith release **EDDIE BARTE** *y* **MENDOZA** from custody unless he is detained thereat for another lawful cause, and to report on his compliance herewith within five days from receipt.

No pronouncement as to costs.

SO ORDERED.

Velasco, Jr. (Chairperson), *Jardeleza*, and *Caguioa*,[*] *JJ.,* concur.

Reyes, *J.,* on leave.

THIRD DIVISION

[G.R. No. 200369. March 1, 2017]

UNION BANK OF THE PHILIPPINES, *petitioner, vs.* **THE HONORABLE REGIONAL AGRARIAN REFORM OFFICER, THE HONORABLE PROVINCIAL**

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[*] Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

AGRARIAN REFORM OFFICER, THE HONORABLE MUNICIPAL AGRARIAN REFORM OFFICER, MIGUEL L. CARASOCHO, GERARDO G. CARAAN, CATALINO P. CARAAN, PASCUAL N. CABRERA, FRANCISCO L. CABRERA, EMILIANA M. CABRERA, CESAR N. CABRERA, PONCIANO R. GARCIA, PEDRO R. GARCIA, MARCELINO R. GARCIA, AGUSTIN M. MARANAN, EUGENIO J. MARANAN, SILVERIO D. MARANAN, ARMANDO T. MARUDO, NENITA L. MARUDO, GUILLERMO C. NARVACAN, DAVID M. TERRENAL, DOROTEO C. TERRENAL, SARDO C. TERRENAL, CARMELITA M. DELA CRUZ, REMEGIO R. VILLAMAYOR, ANICETO C. DEJAN, MACARIO N. DEJAN, EULOGIA L. DIVINA, CELIA C. GARCIA, JOSEFA G. LARENA, MIGUEL M. LUMBRES, JUANITO E. NARVACAN, LUZVIMINDA PEREZ, SEBASTINO C. DELA CRUZ, DANILO P. GARCIA, HERMOGENES L. MARANAN, LEOPOLDO T. MARUDO, MIGUEL C. NATANAUAN, JOSE NATANAUAN, ARCADIO C. RIVERA, MAMERTO B. DEJAN, SEGUNDO C. DEJAN, GREGORIO N. ENRIQUEZ, SIMEON L. ALCANTARA, GAUDENCIO S. ALVEZ, AVELINO G. DE JESUS, GAUDENCIO P. DIMAPLIS, NEMESIO L. DIVINA, RODOLFO L. GARCIA, VALENTIN N. LERON, LEONA N. LLARENA, PONCIANO L. LLARENA, SERGIO N. LLARENA, PABLITO M. LUMBRES, VICTORIA L. MADAJAS, RODOLFO L. MARANAN, ANDRES S, MARANAN, MELECIA T. MARANAN, APOLONIA VILLAMAYOR, JUANITO O. MERCADO, ARSENIO V. NATIVIDAD, CRISPIN M. NATIVIDAD, DANTE A. NATIVIDAD, ELADIO U. NATIVIDAD, FULGENCIO U. NATIVIDAD, GAUDENCIO M. NATIVIDAD, JUAN T. NATIVIDAD, PEDRO M. NATIVIDAD, JUAN P. CABRERA, BARTOLOME M. MICO, EDUARDO M. ONA, LUCAS G. ONA, JULIUS T. PODONAN,

FELICISIMO T. RAMILO, FELINO M. REDONDO, CLEMENTE R. SANGALANG, DOMINGA R. SUAREZ, ARMANDO V. VISPO, ALBERTO P. SALVADOR, FRANCISCO S. CARANDANG, AVELINO L. LLARENA, CELESTINO M. LLARENA, FRISCO N. LLARENA, GREGORIO N. LLARENA, CASIANO N. CABRERA, FLAVIANO N. CABRERA, SEDORO C. CABRERA, SIXTO M. CABRERA, VALERIANO L. CARINGAL, MARITA C. DEJAN, SOFRONIO V. CARAAN, CONRADO K. MERCADO, LEONIZA N. NARVACAN, JUANITO E. NARVACAN, FELICIANO N. NARVACAN, FERNANDO C. MATANGUIHAN, LEONIDES A. MATANGUIHAN, NILO L. MATANGUIHAN, JUANITO A. NATIVIDAD, SERGIO M. NATANAUAN, BARTOLOME C. MATANGUIHAN, MARTIN M. NATANAUAN, FERNANDO G. MEDINA, LUCIA R. NATANAUAN, LOPE N. NATANAUAN, JUANA F. NATANAUAN, FRANCISCO G. NATANAUAN, BUENAVENTURA G. NATANAUAN, ANDRES M. NATANAUAN, CORNELIO L. NARVAEZ, LEONIZA T. ANNOYO, BRICCIO N. LUMBRES, CALIXTO R. LUMBRES, RODOLFO U. LLARENA, BENITA L. MADAJAS, MERCEDES L. MADAJAS, REMEDIOS A. MARUDO, FILOMENA D. MARANAN, ROLANDO N. MEDINA, RICARDO L. MARANAN, ANGEL A. UMANDAP, LUCIDO G. MEDINA, MENARDO G. MEDINA, MARIANO N. REGALADO, MARCIANO C. REDONDO, DAMASA D. REDONDO, LEONIDA R. RAMILO, SERGIO O. NATIVIDAD, RAFAEL T. MARANAN, DEMETRIO M. QUIJANO, LITA L. NARVAEZ, PETRONILO V. ARSENIO, CESARIO N. LLARENA, JUAN D. NARVAEZ, ANSELMO N. LLARENA, MACARIO N. DIJAN, FERNANDO M. ROBLES, LEONARDO N. TERRIBLE, LEONORA N. RIVERA, ELENA N. RIVERA, CATALINO P. CARAON, JUAN S.

MARASIGAN, CELSO A. MERCADO, and ERNESTO MANGUIAT, *respondents.*

[G.R. Nos. 203330-31. March 1, 2017]

UNION BANK OF THE PHILIPPINES, *petitioner, vs.* **PETRONILO V. ARSENIO, CATALINO P. CARAAN, FRANCISCO S. CARANDANG, MACARIO N. DEJAN, ANSELMO L. LLARENA, ANSELMO T. LLARENA, CELESTINO M. LLARENA, CESARIO M. LLARENA, FRISCO N. LLARENA, GREGORIO N. LLARENA, CALIXTO R. LUMBRES, AGUSTIN N. MARANAN, EUGENIO T. MARANAN, JUAN L. MARASIGAN, ARMANDO T. MARUDO, MEDARDO G. MEDINA, CELSO A. MERCADO, FELICIANO N. NARVACAN, GUILLERMO C. NARVACAN, JUAN E. NARVACAN, JUANITO D. NARVAEZ, LITA L. NARVAEZ, DEMETRIO M. QUIJANO, LEONIDA R. RAMILO, ELENA M. RIVERA, FERNANDO M. ROBLES, DAVID M. TERRENAL, and LEONARDO N. TERRIBLE,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (CARL); DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB) AND PROVINCIAL AGRARIAN REFORM ADJUDICATOR (PARAD); HAVE JURISDICTION OVER AGRARIAN REFORM CASES THAT INVOLVE AGRARIAN DISPUTES; TERM "AGRARIAN DISPUTE," DEFINED.— The jurisdiction of a court or tribunal over the nature and subject matter of an action is conferred by law. Section 50 of the CARL and Section 17 of EO No. 229 vested upon the DAR primary jurisdiction to determine and adjudicate agrarian reform matters, as well as original jurisdiction over all matters involving the implementation of agrarian reform. Through EO No. 129-A, the power to adjudicate agrarian reform cases was transferred to the

DARAB, and jurisdiction over the implementation of agrarian reform was delegated to the DAR regional offices. In *Heirs of Candido Del Rosario v. Del Rosario*, we held that consistent with the DARAB Rules of Procedure, the agrarian reform cases that fall within the jurisdiction of the PARAD and DARAB are those that involve agrarian disputes. Section 3(d) of the CARL defines an "agrarian dispute" as any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture. Given the technical legal meaning of the term "agrarian dispute," it follows that not all cases involving agricultural lands automatically fall within the jurisdiction of the PARAD and DARAB.

2. ID.; ID.; ID.; FOR THE PARAD AND DARAB TO ACQUIRE JURISDICTION OVER THE CASE, THERE MUST BE A *PRIMA FACIE* SHOWING THAT THERE IS A TENURIAL ARRANGEMENT OR TENANCY RELATIONSHIP BETWEEN THE PARTIES; ESSENTIAL REQUISITES OF A TENANCY RELATIONSHIP; NOT PRESENT.— Jurisdiction over the subject matter is determined by the allegations of the complaint. For the PARAD and DARAB to acquire jurisdiction over the case, there must be a *prima facie* showing that there is a tenurial arrangement or tenancy relationship between the parties. The essential requisites of a tenancy relationship are key jurisdictional allegations that must appear on the face of the complaint. These essential requisites are: (1) the parties are the landowner and the tenant; (2) the subject is agricultural land; (3) there is consent; (4) the purpose is agricultural production; (5) there is personal cultivation; and (6) there is sharing of harvests. The records clearly show that the two petitions filed by Union Bank with the PARAD did not involve agrarian disputes. Specifically, Union Bank's petitions failed to sufficiently allege—or even hint at—any tenurial or agrarian relations that affect the subject parcels of land. In both petitions, Union Bank merely alleged that respondents were beneficiaries of the CLOAs. That Union Bank questions the qualifications of the beneficiaries suggests that the latter were not known to, much less tenants of, Union Bank prior to the dispute. We therefore agree with the conclusion of the CA that there was no tenancy relationship between the parties.

Consequently, the PARAD did not have jurisdiction over the case.

3. ID.; ID.; ID.; CASES INVOLVING THE CANCELLATION OF REGISTERED CERTIFICATES OF LAND OWNERSHIP AWARD (CLOAs) RELATING TO AN AGRARIAN DISPUTE BETWEEN LANDOWNERS AND TENANTS FALL WITHIN THE JURISDICTION OF PARAD/DARAB, WHILE CASES CONCERNING THE CANCELLATION OF CLOAs THAT INVOLVE PARTIES WHO ARE NOT AGRICULTURAL TENANTS OR LESSEES BUT RELATING TO THE ADMINISTRATIVE IMPLEMENTATION OF AGRARIAN REFORM LAWS, RULES AND REGULATIONS FALL WITHIN THE JURISDICTION OF THE DEPARTMENT OF AGRARIAN REFORM.— [T]he jurisdiction conferred to the DARAB is limited to agrarian disputes, which is subject to the precondition that there exist tenancy relations between the parties. This delineation applies in connection with cancellation of the CLOAs. In *Valcurza v. Tamparong, Jr.*, we stated: Thus, the DARAB has jurisdiction over cases involving the cancellation of registered CLOAs relating to an agrarian dispute between landowners and tenants. However, **in cases concerning the cancellation of CLOAs that involve parties who are not agricultural tenants or lessees — cases related to the administrative implementation of agrarian reform laws, rules and regulations — the jurisdiction is with the DAR, and not the DARAB**. x x x. Thus, in the absence of a tenancy relationship between Union Bank and private respondents, the PARAD/DARAB has no jurisdiction over the petitions for cancellation of the CLOAs. Union Bank's postulate that there can be no shared jurisdiction is partially correct; however, the jurisdiction in this case properly pertains to the DAR, to the exclusion of the DARAB.

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES ARE GENERALLY ACCORDED RESPECT AND EVEN FINALITY BY THE COURT, ESPECIALLY WHEN THESE FINDINGS ARE AFFIRMED BY THE COURT OF APPEALS.— In G.R. No. 203330, Union Bank principally questions the DAR Secretary's finding that the properties are not exempt from CARP. It cites the appraisal reports showing

that the properties have an elevated slope of more than 18% and were not irrigated. Effectively, Union Bank is asking us to weigh the evidence anew. However, as we have held time and again, only questions of law may be put in issue in a petition for review under Rule 45. "We cannot emphasize to litigants enough that the Supreme Court is not a trier of facts. It is not our function to analyze or weigh the evidence all over again." Corollary to this is the doctrine that factual findings of administrative agencies are generally accorded respect and even finality by this Court, especially when these findings are affirmed by the Court of Appeals.

5. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP); TO BE EXEMPT FROM THE CARP, THE LAND MUST HAVE A GRADATION SLOPE OF 18% OR MORE AND MUST BE UNDEVELOPED; THE WEIGHING OF PIECES OF EVIDENCE PROPERLY FALLS WITHIN THE SOUND DISCRETION OF THE DAR SECRETARY, AND IN THE ABSENCE OF ANY CLEAR SHOWING THAT HE ACTED IN GRAVE ABUSE OF DISCRETION, THE COURT WILL NOT INTERFERE WITH HIS EXERCISE OF DISCRETION.— We note that while Union Bank's claim that the properties exceeded 18% is uncontroverted, this alone is not sufficient to claim exemption from the CARP. Section 10 of the CARL provides : Sec 10. *Exemptions and Exclusions.* — x x x, and **all lands with eighteen percent (18%) slope and over, except those already developed shall be exempt from coverage of this Act.** Therefore, to be exempt from the CARP, the land must have a gradation slope of 18% or more ***and*** must be undeveloped. To support its contention that the lands were undeveloped, Union Bank submitted a certification by the National Irrigation Administration stating that the lands were not irrigated and a land capability map by Asian Appraisal stating that the lands were best suited for pasture. On the other hand, the case report prepared by the MARO shows that the properties were already agriculturally developed. The weighing of these pieces of evidence properly falls within the sound discretion of the DAR Secretary. In the absence of any clear showing that he acted in grave abuse of discretion, the Court will not interfere with his exercise of discretion.

6. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; AN ISSUE, WHICH WAS NEITHER AVERRED IN THE COMPLAINT NOR RAISED DURING THE TRIAL IN THE LOWER COURTS, CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL BECAUSE IT WOULD BE OFFENSIVE TO THE BASIC RULE OF FAIR PLAY AND JUSTICE, AND WOULD BE VIOLATIVE OF THE CONSTITUTIONAL RIGHT TO DUE PROCESS OF THE OTHER PARTY.— In support of its position that the CLOAs should be cancelled, Union Bank claims that it has not been paid just compensation and that the DAR did not follow the correct procedure in issuing the CLOAs. These, however, are being raised for the first time before us. It is a fundamental rule that this Court will not resolve issues that were not properly brought and ventilated in the lower courts. Questions raised on appeal must be within the issues framed by the parties, and consequently, issues not raised in the trial court cannot be raised for the first time on appeal. An issue, which was neither averred in the complaint nor raised during the trial in the lower courts, cannot be raised for the first time on appeal because it would be offensive to the basic rule of fair play and justice, and would be violative of the constitutional right to due process of the other party. Nonetheless, Union Bank is not precluded from raising these issues in an appropriate case before a competent tribunal.

APPEARANCES OF COUNSEL

De Guzman Dionido Caga Jucaban & Associates Law Offices for petitioner Union Bank of the Philippines.

Bureau of Agrarian Legal Assistance for respondents.

D E C I S I O N

JARDELEZA, *J.*:

There are two primary questions raised in these consolidated petitions. The first is whether the Department of Agrarian Reform Adjudication Board has jurisdiction over petitions for cancellation of Certificates of Land Ownership Award involving parties who do not have a tenancy relationship.

The second is whether the factual findings of the Secretary of Agrarian Reform can be questioned in a petition for review on *certiorari*.

I

Petitioner Union Bank of the Philippines (Union Bank) is the duly registered owner of land located at Barangay Bunggo, Calamba, Laguna covered by Transfer Certificate of Title (TCT) Nos. T-137846 and T-156610 of the Registry of Deeds of Laguna with areas of 1,083,250 and 260,132 square meters, respectively.[1]

Union Bank offered these parcels of land to the Department of Agrarian Reform (DAR) through the Voluntary Offer to Sell (VOS) arrangement under the Comprehensive Agrarian Reform Program (CARP) of the government. After the DAR and Land Bank of the Philippines (LBP) inspected the properties, DAR offered the amounts of ₱2,230,699.30 and 716,672.35 as just compensation. Union Bank did not agree with the valuation; thus, the DAR Regional Director requested LBP to open trust accounts in the name of Union Bank.[2]

In the meantime, the DAR started issuing Certificates of Land Ownership Award (CLOAs) in the names of private respondents as agrarian reform beneficiaries for the land covered by TCT No. T-156610. On September 9, 1993, the DAR Municipal Agrarian Reform Officer (MARO) transmitted 74 CLOAs to the Register of Deeds of Calamba, Laguna for registration.[3] On September 14, 1993, the DAR Provincial Agrarian Reform Officer (PARO) transmitted another 115 CLOAs to the same register of deeds.[4] The land covered by

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[1] CA *rollo* (CA-G.R. SP No. 116106), pp. 87-98; *rollo* (G.R. No. 200369), pp. 91-92.

[2] *Rollo* (G.R. No. 200369), pp. 92; 142-143.

[3] *Id.* at 147-148.

[4] *Id.* at 149-155.

TCT No. 137846 was transferred to the Republic of the Philippines on September 13, 1993.[5]

On June 29, 1995, Union Bank filed a "Motion to Withdraw Voluntary Offer To Sell On Property from CARP Coverage" in the land valuation proceedings for the land covered by TCT No. T-156610 pending before the Regional Agrarian Reform Adjudicator (RARAD) for Region IV.[6] The RARAD would later provisionally dismiss the proceedings after Union Bank filed a letter request with the DAR to withdraw the VOS and to exempt the properties from CARP.[7]

A

On August 1, 1996, Union Bank submitted a letter to the DAR requesting that its VOS be withdrawn and that the properties be exempted from CARP coverage.[8] The matter was docketed as A-9999-04-VOS-103-04.[9] Union Bank alleged that the properties had a slope exceeding 18% and were undeveloped, thus, exempt from CARP pursuant to Section 10 of the Comprehensive Agrarian Reform Law[10] (CARL).[11]

In its Order dated July 21, 2008, then DAR Secretary Nasser C. Pangandaman denied Union Bank's request for CARP exemption and withdrawal of its VOS for lack of merit.[12] According to the DAR Secretary, Union Bank failed to prove by substantial evidence that the properties were both undeveloped and had a slope gradation of more than 18%

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[5] *Id.* at 46.

[6] CA *rollo* (CA-G.R. SP No. 116106), p. 105.

[7] *Id.* at 105-106.

[8] *Id.* at 107-111.

[9] *Rollo* (G.R. No. 200369), p. 93.

[10] Republic Act No. 6657 (1988).

[11] CA *rollo* (CA-G.R. SP No. 116106), pp. 107-108.

[12] CA *rollo* (CA-G.R. SP No. 114159), pp. 22-25.

because the slope map and land capability map submitted by Union Bank were not certified by the Department of Environment and Natural Resources (DENR).[13]

After the DAR Secretary denied its motion for reconsideration,[14] Union Bank filed a petition for review under Rule 43 with the Court of Appeals (CA). The case, docketed as CA-G.R. SP No. 114159, was consolidated with CA-G.R. SP No. 114354.[15] In its Decision dated October 21, 2011, the CA Fifteenth Division denied the petitions.[16] The CA agreed with the DAR Secretary's ruling that absent the DENR certification, the appraisal maps were "not substantial enough to warrant the conclusion that the properties are not suited for agricultural production." The CA also cited the case report prepared by the MARO which noted the "presence of multiple crops, ranging from vegetables, rice/corn to permanent industrial crops in the area."[17] Finally, the CA faulted Union Bank for failing to present additional evidence during the two-year period during which its motion for reconsideration with DAR was pending.[18] The CA subsequently denied Union Bank's motion for reconsideration.[19]

B

On December 20, 1996, Union Bank filed a Petition[20] for cancellation of CLOAs against the Regional Agrarian Reform Officer (RARO), PARO, MARO, and 28 agrarian reform beneficiaries of the land covered by TCT No. T-156610 with

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[13] *Id.* at 23.

[14] *Id.* at 26-28.

[15] *Rollo* (G.R. Nos. 203330-31), p. 50.

[16] *Rollo* (G.R. Nos. 203330-31), pp. 49-66. Penned by Associate Justice Angelita A. Gacutan, with Associate Justices Vicente S. E. Veloso and Francisco P. Acosta concurring.

[17] *Id.* at 60-61.

[18] *Id.* at 63.

[19] *Id.* at 67-69.

[20] CA *rollo* (CA-G.R. SP No. 114354), pp. 269-281.

the Office of the Provincial Agrarian Reform Adjudicator (PARAD) of Laguna. The petition, docketed as PARAD Case Nos. R-403-0075-96 to R-403-0102-96, was dismissed without prejudice on October 9, 1997 for being premature in view of Union Bank's pending request for withdrawal of its VOS and exemption from CARP with DAR.[21] The PARAD denied Union Bank's motion for reconsideration on December 17, 1997;[22] Union Bank claimed to have received the order of denial only on July 10, 2002.[23]

Union Bank appealed to the Department of Agrarian Reform Adjudication Board (DARAB). The appeal was docketed as DARAB Case Nos. 12313 to 12313-A27.[24] On September 14, 2009, the DARAB denied the appeal for lack of merit.[25] According to the DARAB, "there has to be a finding first by the DAR Secretary that the land is really exempted" from the coverage of CARP; absent this, "the petition for cancellation of the CLOAs is indeed prematurely filed."[26] The DARAB subsequently denied Union Bank's motion for reconsideration.[27]

Union Bank then filed a petition for review under Rule 43 with the CA docketed as CA-G.R. SP No. 114354. The case was consolidated with the aforementioned CA-G.R. SP No. 114159. The CA Fifteenth Division denied the petition in view of its finding that the properties were not exempt from CARP.[28]

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[21] *Id.* at 289-299.

[22] *Id.* at 312-318.

[23] *Rollo* (G.R. Nos. 203330-31), p. 21.

[24] CA *rollo* (CA-G.R. SP No. 114354), p. 39.

[25] *Id.* at 39-44.

[26] *Id.* at 42.

[27] *Id.* at 49-51.

[28] *Rollo* (G.R. Nos. 203330-31), pp. 49-66.

After the CA denied its motion for reconsideration,[29] Union Bank filed a consolidated petition for review on *certiorari* assailing the CA's decision and resolution in the consolidated cases of CA-G.R. SP No. 114159 and CA-G.R. SP No. 114354. The consolidated petition is docketed as G.R. Nos. 203330-31.[30]

C

On January 23, 2004, Union Bank filed a separate petition for cancellation of the CLOAs, this against 141 agrarian reform beneficiaries, before the PARAD of Laguna. The case was docketed as Case Nos. R-0403-0016-0023-03 to R-0403-0037-0303-03.[31] The PARAD dismissed the petition for being premature because "there must first be a positive act from the Secretary of the DAR or his authorized representative declaring said property as excluded/exempted from coverage."[32] On appeal, docketed as DSCA No. 0379, the DARAB sustained the PARAD's dismissal of Union Bank's petition for cancellation of the CLOAs.[33]

Union Bank elevated the case to the CA through a petition for review under Rule 43, which was docketed as CA-G.R. SP No. 116106. In its Decision dated November 18, 2011,[34] the Special Twelfth Division denied the petition for lack of merit. Citing relevant jurisprudence, the CA held that for the DARAB to have jurisdiction in cases involving

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[29] *Id*. at 67-69.

[30] G.R. No. 203330, formerly CA-G.R. SP No. 114159, pertains to the DAR Secretary's denial of Union Bank's CARP exemption, while G.R. No. 203331, formerly CA-G.R. SP No. 114354, involves the PARAD's dismissal of the petition for cancellation of CLOAs.

[31] CA *rollo* (CA-G.R. SP No. 116106), pp. 62; 154.

[32] *Id.* at 154-163.

[33] *Id.* at 58-64.

[34] *Rollo* (G.R. No. 200369), pp. 87-107, Penned by Associate Justice Fernanda Lampas-Peralta, with Associate Justices Mariflor P. Punzalan-Castillo and Socorro B. Inting concurring.

cancellation of the CLOAs, there must be an agrarian dispute between landowner and *tenants* who are recipients of the CLOAs. The CA found that "the record is bereft of any evidence showing that petitioner and private respondents agrarian reform beneficiaries had tenancy relations."[35] It also ruled that cancellation of the CLOAs can only be effected after the DAR Secretary administratively declares that the land is exempted or excluded from CARP coverage.[36] Since the DAR Secretary was yet to make such determination when Union Bank filed its petition with the PARAD, the PARAD correctly dismissed the petition for being premature. The CA subsequently denied Union Bank's motion for reconsideration.[37]

The CA Decision and Resolution in CA-G.R. SP No. 116106 are being assailed by Union Bank in its petition for review on *certiorari* docketed as G.R. No. 200369.

Upon motion of Union Bank,[38] we consolidated G.R. Nos. 203330-31 with G.R. No. 200369 on March 6, 2013.[39]

II

The main issues in G.R. Nos. 203331 and 200369 are identical. In both cases, Union Bank assails the dismissal of its petitions for cancellation of the CLOAs. The common ground relied upon for the dismissal, first by the respective PARADs, and on appeal, by the DARAB and the CA, is that the petitions were prematurely filed in view of Union Bank's then pending request for CARP exemption and withdrawal of VOS. In G.R. No. 200369, the CA added that the DARAB had no jurisdiction over the case because of the absence of a tenancy relationship between Union Bank and the agrarian

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[35] *Id.* at 101.

[36] *Id.* at 104-106.

[37] *Id.* at 108-109.

[38] *Rollo* (G.R. Nos. 203330-31), pp. 247-253.

[39] *Id.* at 374.

reform beneficiaries. In its petitions before us, Union Bank insists that the DARAB is expressly granted quasi-judicial powers by Executive Order (EO) No. 229.[40] It posits that the DAR Secretary was "effectively ousted" from jurisdiction because the CLOAs were issued upon his determination that the properties were subject to CARP and that the DARAB "cannot share jurisdiction" with the DAR Secretary on the issue of the validity of the issuance of the CLOAs.[41] In response, private respondents argue that the classification and identification of landholdings for CARP coverage, including petitions for lifting of such coverage, are lodged with the DAR Secretary.[42] Hence, the CA correctly upheld the dismissal of the case.

The jurisdiction of a court or tribunal over the nature and subject matter of an action is conferred by law.[43] Section 50[44]

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[40] Providing the Mechanisms for the Implementation of the Comprehensive Agrarian Reform Program (1987).

[41] *Rollo* (G.R. No. 200369), pp. 56-57.

[42] *Id.* at 162-164.

[43] *Heirs of Simeon Latayan v. Tan*, G.R. No. 201652, December 2, 2015, 776 SCRA 1, 13.

[44] Sec. 50. *Quasi-Judicial Powers of the DAR*. – The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR).

It shall not be bound by technical rules of procedure and evidence but shall proceed to hear and decide all cases, disputes or controversies in a most expeditious manner, employing all reasonable means to ascertain the facts of every case in accordance with justice and equity and the merits of the case. Toward this end, it shall adopt a uniform rule of procedure to achieve a just, expeditious and inexpensive determination for every action or proceeding before it.

It shall have the power to summon witnesses, administer oaths, take testimony, require submission of reports, compel the production of books and documents and answers to interrogatories and issue *subpoena,* and *subpoena duces tecum*, and enforce its writs through sheriffs or other duly deputized officers. It shall likewise have the power to punish direct

of the CARL and Section 17[45] of EO No. 229 vested upon the DAR primary jurisdiction to determine and adjudicate agrarian reform matters, as well as original jurisdiction over all matters involving the implementation of agrarian reform. Through EO No. 129-A,[46] the power to adjudicate agrarian reform cases was transferred to the DARAB,[47] and jurisdiction over the implementation of agrarian reform was delegated to the DAR regional offices.[48] In *Heirs of Candido Del Rosario v. Del Rosario*,[49] we held that consistent with the DARAB Rules of Procedure,[50] the agrarian reform cases that fall within the jurisdiction of the PARAD and DARAB are those that involve agrarian disputes. Section 3(d) of the CARL defines

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and indirect contempts in the same manner and subject to the same penalties as provided in the Rules of Court.

Responsible farmer leaders shall be allowed to represent themselves, their fellow farmers, or their organizations in any proceedings before the DAR: *Provided, however*, That when there are two or more representatives for any individual or group, the representatives should choose only one among themselves to represent such party or group before any DAR proceedings.

Notwithstanding an appeal to the Court of Appeals, the decision of the DAR shall be immediately executory.

[45] Sec. 17. *Quasi-Judicial Powers of the DAR*. – The DAR is hereby vested with quasi-judicial powers to determine and adjudicate agrarian reform matters, and shall have exclusive original jurisdiction over all matters involving implementation of agrarian reform, except those falling under the exclusive original jurisdiction of the DENR and the [DA].

The DAR shall have powers to punish for contempt and to issue *subpoena*, *subpoena duces tecum* and writs to enforce its orders or decisions.

The decisions of the DAR may, in proper cases, be appealed to the Regional Trial Courts but shall be immediately executory notwithstanding such appeal.

[46] Reorganization Act of the Department of Agrarian Reform (1987).

[47] EO No. 129-A, Sec. 13.

[48] EO No. 129-A, Sec. 24.

[49] G.R. No. 181548, June 20, 2012, 674 SCRA 180.

[50] 1994 DARAB Rules of Procedure, Rule II, Secs. 1 & 2.

an "agrarian dispute" as any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture.[51] Given the technical legal meaning of the term "agrarian dispute," it follows that not all cases involving agricultural lands automatically fall within the jurisdiction of the PARAD and DARAB.

Jurisdiction over the subject matter is determined by the allegations of the complaint.[52] For the PARAD and DARAB to acquire jurisdiction over the case, there must be a *prima facie* showing that there is a tenurial arrangement or tenancy relationship between the parties. The essential requisites of a tenancy relationship are key jurisdictional allegations that must appear on the face of the complaint. These essential requisites are: (1) the parties are the landowner and the tenant; (2) the subject is agricultural land; (3) there is consent; (4) the purpose is agricultural production; (5) there is personal cultivation; and (6) there is sharing of harvests.[53]

The records clearly show that the two petitions filed by Union Bank with the PARAD did not involve agrarian disputes. Specifically, Union Bank's petitions failed to sufficiently allege—or even hint at—any tenurial or agrarian relations that affect the subject parcels of land. In both petitions, Union Bank merely alleged that respondents were beneficiaries of the CLOAs. That Union Bank questions the qualifications of the beneficiaries suggests that the latter were not known to, much less tenants of, Union Bank prior to the dispute. We therefore agree with the conclusion of the CA that there was no tenancy relationship between the parties. Consequently, the PARAD did not have jurisdiction over the case.

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[51] *Heirs of Candido Del Rosario v. Del Rosario, supra* at 191.

[52] *Sindico v. Diaz*, G.R. No. 147444, October 1, 2004, 440 SCRA 50, 53.

[53] *Agrarian Reform Beneficiaries Association v. Fil-Estate Properties, Inc.,* G.R. No. 163598, August 12, 2015, 766 SCRA 313, 335.

Union Bank repeatedly cites Section 17 of EO No. 229 to argue that the PARAD/DARAB has jurisdiction over the case, and that it cannot share jurisdiction with the DAR Secretary. Such contention appears to have stemmed from petitioner's unfamiliarity with the legislative history of agrarian reform laws. Section 17 of EO No. 229, as well as Section 50 of the CARL, conferred jurisdiction to the DAR—not to the DARAB. In fact, at the time EO No. 229 and the CARL were enacted, the DARAB did not exist. The jurisdiction conferred to the DAR was twofold: (1) primary jurisdiction over the adjudication of agrarian disputes; and (2) original jurisdiction over agrarian reform implementation. EO No. 129-A effectively split these two jurisdictions between the newly created DARAB with respect to the former and to the DAR regional offices as regards the latter.

As previously discussed, the jurisdiction conferred to the DARAB is limited to agrarian disputes, which is subject to the precondition that there exist tenancy relations between the parties. This delineation applies in connection with cancellation of the CLOAs. In *Valcurza v. Tamparong, Jr.*,[54] we stated:

> Thus, the DARAB has jurisdiction over cases involving the cancellation of registered CLOAs relating to an agrarian dispute between landowners and tenants. However, **in cases concerning the cancellation of CLOAs that involve parties who are not agricultural tenants or lessees — cases related to the administrative implementation of agrarian reform laws, rules and regulations — the jurisdiction is with the DAR, and not the DARAB.**

Here, petitioner is correct in alleging that it is the DAR and not the DARAB that has jurisdiction. First, the issue of whether the CLOA issued to petitioners over respondent's land should be cancelled hinges on that of whether the subject landholding is exempt from CARP coverage by virtue of two zoning ordinances. This question involves the DAR's determination of whether the subject land is indeed exempt from CARP coverage — a matter

[54] G.R. No. 189874, September 4, 2013, 705 SCRA 128.

involving the administrative implementation of the CARP Law. Second, respondent's complaint does not allege that the prayer for the cancellation of the CLOA was in connection with an agrarian dispute. The complaint is centered on the fraudulent acts of the MARO, PARO, and the regional director that led to the issuance of the CLOA.[55] (Emphasis supplied; citations omitted.)

Thus, in the absence of a tenancy relationship between Union Bank and private respondents, the PARAD/DARAB has no jurisdiction over the petitions for cancellation of the CLOAs. Union Bank's postulate that there can be no shared jurisdiction is partially correct; however, the jurisdiction in this case properly pertains to the DAR, to the exclusion of the DARAB.

III

In G.R. No. 203330, Union Bank principally questions the DAR Secretary's finding that the properties are not exempt from CARP. It cites the appraisal reports showing that the properties have an elevated slope of more than 18% and were not irrigated. Effectively, Union Bank is asking us to weigh the evidence anew. However, as we have held time and again, only questions of law may be put in issue in a petition for review under Rule 45. "We cannot emphasize to litigants enough that the Supreme Court is not a trier of facts. It is not our function to analyze or weigh the evidence all over again."[56] Corollary to this is the doctrine that factual findings of administrative agencies are generally accorded respect and even finality by this Court, especially when these findings are affirmed by the Court of Appeals.[57]

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[55] *Id.* at 137-138.

[56] *University of the Immaculate Conception v. Office of the Secretary of Labor and Employment*, G.R. Nos. 178085-86, September 14, 2015, 770 SCRA 430, 449. Citations omitted.

[57] See *Delos Reyes v. Flores*, G.R. No. 168726, March 5, 2010, 614 SCRA 270.

We note that while Union Bank's claim that the properties exceeded 18% is uncontroverted, this alone is not sufficient to claim exemption from the CARP. Section 10 of the CARL provides:

> Sec. 10. *Exemptions and Exclusions*. – Lands actually, directly and exclusively used and found to be necessary for parks, wildlife, forest reserves, reforestration, fish sanctuaries and breeding grounds, watersheds, and mangroves, national defense, school sites and campuses including experimental farm stations operated by public or private schools for educational purposes, seeds and seedlings research and pilot production centers, church sites and convents appurtenant thereto, mosque sites and Islamic centers appurtenant thereto, communal burial grounds and cemeteries, penal colonies and penal farms actually worked by the inmates, government and private research and quarantine centers, and **all lands with eighteen percent (18%) slope and over, except those already developed shall be exempt from coverage of this Act**. (Emphasis supplied.)

Therefore, to be exempt from the CARP, the land must have a gradation slope of 18% or more ***and*** must be undeveloped. To support its contention that the lands were undeveloped, Union Bank submitted a certification by the National Irrigation Administration stating that the lands were not irrigated and a land capability map by Asian Appraisal stating that the lands were best suited for pasture.[58] On the other hand, the case report prepared by the MARO shows that the properties were already agriculturally developed.[59] The weighing of these pieces of evidence properly falls within the sound discretion of the DAR Secretary. In the absence of any clear showing that he acted in grave abuse of discretion, the Court will not interfere with his exercise of discretion.

Our concluding statement in *Sebastian v. Morales*[60] is very apt:

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[58] CA *rollo* (CA-G.R. SP No. 114354), pp. 260-261.

[59] *Id*. at 286-288.

[60] G.R. No. 141116, February 17, 2003, 397 SCRA 549.

As a final salvo, petitioners urge us to review the factual findings of the DAR Secretary. Settled is the rule that factual questions are not the proper subject of an appeal by certiorari, as a petition for review under Rule 45 is limited only to questions of law. Moreover, it is doctrine that the "errors" which may be reviewed by this Court in a petition for certiorari are those of the Court of Appeals, and not directly those of the trial court or the quasi-judicial agency, tribunal, or officer which rendered the decision in the first instance. Finally, it is settled that factual findings of administrative agencies are generally accorded respect and even finality by this Court, if such findings are supported by substantial evidence, a situation that obtains in this case. The factual findings of the Secretary of Agrarian Reform who, by reason of his official position, has acquired expertise in specific matters within his jurisdiction, deserve full respect and, without justifiable reason, ought not to be altered, modified or reversed.[61] (Citations omitted.)

IV

In support of its position that the CLOAs should be cancelled, Union Bank claims that it has not been paid just compensation and that the DAR did not follow the correct procedure in issuing the CLOAs. These, however, are being raised for the first time before us. It is a fundamental rule that this Court will not resolve issues that were not properly brought and ventilated in the lower courts. Questions raised on appeal must be within the issues framed by the parties, and consequently, issues not raised in the trial court cannot be raised for the first time on appeal. An issue, which was neither averred in the complaint nor raised during the trial in the lower courts, cannot be raised for the first time on appeal because it would be offensive to the basic rule of fair play and justice, and would be violative of the constitutional right to due process of the other party.[62] Nonetheless, Union Bank is not precluded from raising these issues in an appropriate case before a competent tribunal.

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[61] *Id.* at 562.

[62] *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines,* G.R. No. 166461, April 30, 2010, 619 SCRA 609, 623-624.

WHEREFORE, the petitions are **DENIED**. The Decision dated November 18, 2011 and Resolution dated January 27, 2012 of the Court of Appeals–Special Twelfth Division in CA-G.R. SP No. 116106, and the Decision dated October 21, 2011 and Resolution dated August 30, 2012 of the Court of Appeals–Fifteenth Division in CA-G.R. SP Nos. 114159 and 114354 are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, and *Caguioa,*[*] *JJ.,* concur.

Sereno,[**] *C.J.,* on official business.

SECOND DIVISION

[G.R. No. 205578. March 1, 2017]

GEORGIA OSMEÑA-JALANDONI, *petitioner, vs.* **CARMEN A. ENCOMIENDA,** *respondent.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE OF THE PHILIPPINES; OBLIGATIONS AND CONTRACTS; PAYMENT OR PERFORMANCE; THE DEBTOR WHO KNOWS THAT ANOTHER HAS PAID HIS OBLIGATION FOR HIM AND DOES NOT REPUDIATE IT AT ANY TIME, MUST COROLLARILY PAY THE AMOUNT ADVANCED BY

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[*] Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

[**] Designated as additional Member per Raffle dated February 27, 2017; on official business per Special Order No. 2418.

SUCH THIRD PERSON.— [T]he second paragraph of Article 1236 of the Civil Code provides: x x x Whoever pays for another may demand from the debtor what he has paid, except that **if he paid without the knowledge or against the will of the debtor**, he can **recover only insofar as the payment has been beneficial to the debtor**. Clearly, Jalandoni greatly benefited from the purportedly unauthorized payments. Thus, even if she asseverates that Encomienda's payment of her household bills was without her knowledge or against her will, she cannot deny the fact that the same still inured to her benefit and Encomienda must therefore be consequently reimbursed for it. Also, when Jalandoni learned about the payments, she did nothing to express her objection to or repudiation of the same, within a reasonable time. Even when she claimed that she was prepared with her own money, she still accepted the financial assistance and actually made use of it. While she asserts to have been upset because of Encomienda's supposedly intrusive actions, she failed to protest and, in fact, repeatedly accepted money from her and further allowed her to pay her driver, security guard, househelp, and bills for her cellular phone, cable television, pager, gasoline, food, and other utilities. She cannot, therefore, deny the benefits she reaped from said acts now that the time for restitution has come. The debtor who knows that another has paid his obligation for him and who does not repudiate it at any time, must corollarily pay the amount advanced by such third person.

2. ID.; ID.; ID.; SIMPLE LOAN; THE EXISTENCE OF A CONTRACT OF LOAN CANNOT BE DENIED MERELY BECAUSE IT WAS NOT REDUCED IN WRITING, AS CONTRACTS SHALL BE OBLIGATORY IN WHATEVER FORM THEY MAY HAVE BEEN ENTERED INTO, PROVIDED ALL THE ESSENTIAL REQUISITES FOR THEIR VALIDITY ARE PRESENT.— The RTC likewise harped on the fact that if Encomienda really intended the amounts to be a loan, normal human behavior would have prompted at least a handwritten acknowledgment or a promissory note the moment she parted with her money for the purpose of granting a loan. This would be particularly true if the loan obtained was part of a business dealing and not one extended to a close friend who suddenly needed monetary aid. In fact, in case of loans between friends and relatives, the absence of acknowledgment receipts or promissory notes is more natural and real. In a similar

case, the Court upheld the CA's pronouncement that the existence of a contract of loan cannot be denied merely because it was not reduced in writing. Surely, there can be a verbal loan. Contracts are binding between the parties, whether oral or written. The law is explicit that contracts shall be obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present. A simple loan or *mutuum* exists when a person receives a loan of money or any other fungible thing and acquires its ownership. He is bound to pay to the creditor the equal amount of the same kind and quality.

3. ID.; ID.; HUMAN RELATIONS; PRINCIPLE OF UNJUST ENRICHMENT; THERE IS UNJUST ENRICHMENT WHEN A PERSON IS UNJUSTLY BENEFITED, AND SUCH BENEFIT IS DERIVED AT THE EXPENSE OF OR WITH DAMAGES TO ANOTHER; APPLICABLE TO THE CASE AT BAR.—Truly, Jalandoni herself admitted that she received the aforementioned amounts from Encomienda and is merely using her lack of authorization over the payments as her defence. In fact, *Lupong Tagapamayapa* member Rogero, a disinterested third party, confirmed this, saying that during the *barangay* conciliation, Jalandoni indeed admitted having borrowed money from Encomienda and that she would return it. Jalandoni, however, reneged on said promise. The principle of unjust enrichment finds application in this case. Unjust enrichment exists when a person unfairly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity, and good conscience. There is unjust enrichment under Article 22 of the Civil Code when (1) a person is unjustly benefited, and (2) such benefit is derived at the expense of or with damages to another. The principle of unjust enrichment essentially contemplates payment when there is no duty to pay, and the person who receives the payment has no right to receive it. The CA is then correct when it ruled that allowing Jalandoni to keep the amounts received from Encomienda will certainly cause an unjust enrichment on Jalandoni's part and to Encomienda's damage and prejudice.

APPEARANCES OF COUNSEL

Mercado Geotina Viagedor & Bautista for petitioner.
Danilo R. Go for respondent.
Tabotabo Law Office, co-counsel for respondent.

D E C I S I O N

PERALTA, *J.*:

This is an appeal from the Decision[1] of the Court of Appeals, Cebu City (*CA*) dated March 29, 2012 and its Resolution[2] dated December 19, 2012 in CA-G.R. CV No. 01339 which set aside the Decision[3] of the Cebu Regional Trial Court (*RTC*), Branch 57, dated January 9, 2006, dismissing respondent Carmen Encomienda's claim for sum of money.

The facts, as shown by the records of the case, are as follows:

Encomienda narrated that she met petitioner Georgia Osmeña-Jalandoni in Cebu on October 24, 1995, when the former was purchasing a condominium unit and the latter was the real estate broker. Thereafter, Encomienda and Jalandoni became close friends. On March 2, 1997, Jalandoni called Encomienda to ask if she could borrow money for the search and rescue operation of her children in Manila, who were allegedly taken by their father, Luis Jalandoni. Encomienda then went to Jalandoni's house and handed ₱100,000.00 in a sealed envelope to the latter's security guard. While in Manila, Jalandoni again borrowed money for the following errands:[4]

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[1] Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Nina G. Antonio-Valenzuela and Pamela Ann Abella Maxino; concurring; *rollo*, pp. 30-54.

[2] Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Pamela Ann Abella Maxino and Carmelita Salandanan Manahan; concurring; *id.* at 55-56.

[3] Penned by Judge Enriqueta Loquillano-Belarmino; *id.* at 64-79.

[4] *Rollo,* pp. 31-34.

1. Publication in SunStar Daily of Georgia's missing children	₱11,000.00
2. Reproduction of the pictures of Georgia's children	720.00
3. Additional reproduction of pictures	1,350.00
4. Plane fare for Georgia's secretary to Manila	3,196.00
5. Allowance of Germana Berning in going to Manila	4,080.00
6. Cash airbill of Kabayan Forwarders	49.50
7. Cash airbill of Kabayan Forwarders	49.50
8. Salary of Georgia's household helper Reynilda Atillo for March 16-31, 1997	750.00
9. Salary of Georgia's driver Billy Tano for March 16-31, 1997	2,000.00
10. Petty cash for Germana Berning	250.00
11. Consultancy fee of Germana Berning	7,000.00
12. Filing fee of case filed by Georgia against CIS	100,500.00
13. Cebu cable bill per receipt No. 197743	380.00
14. Cebu cable bill per receipt No. 197742	380.00
15. Bankard bill of Georgia	840.00
16. Services of 2 security guards for 2/1-15/97 and 3/1-31/97	14,715.00
17. One sack of rice and gasoline	1,270.00
18. Food allowance for Georgia's household and payment for food ordered	2,900.00
19. Shipping charge of immigration papers sent to Georgia in Manila	145.45
20. Shipping charge of cellphone and easy call pager sent to Georgia	145.45
21. Salary of Georgia's helper Renilda Atillo from April 1-15, 1997	750.00
22. Purchase of cellphone registered in the name of Encomienda's sister, Paz	10,260.00
23. Pager acquired on April 10, 1997 upon Georgia's request	6,351.00
24. Wanted ad in Panay News and expenses of Georgia's secretary	8,500.00

25. Salary of Billy Tano from April 1-15, 1997	2,000.00
26. Water consumption of Georgia's house in Paradise Village	1,120.00
27. Services of security guard from April 1-15, 1997	4,905.00
28. Telephone bill for Georgia's residential phone from March 25 to April 24, 1997	3,609.77
29. Telephone bill for Georgia's other telephone line	440.20
30. Plane ticket for Georgia's psychic friends	$1,570.00
31. Petty cash for GRO Co. owned by Georgia	3,150.00
32. Bill of cellphone under the name of Paz Encomienda	5,468.70
33. Another bill of cellphone used by Georgia	3,923.87
34. Cost of reproduction of pictures	2,500.00
35. Salary of driver and house help of Georgia from May 15-31, 1997	3,250.00
36. Service charge of Georgia's cellphone number	550.00
37. Ritual performed in Georgia's house to drive away evil spirits	17,500.00
38. Prayers for Georgia's missing children	5,500.00
39. Amount given to priest who performed a blessing of the house of Georgia	500.00
40. Globe cellular phone bill of Georgia as of 5/10/97	7,957.24
41. Salary of Germana Berning for May 1997	6,000.00
42. Amount given to priest for mass and blessing	2,500.00
43. Cash given to G. Berning for payment of Georgia's phone bill	3,000.00
44. Gasoline for Georgia's car paid on 6/10/97 per cash slip #221088	150.00
45. Gasoline for Georgia's car paid on 6/10/97 per cash slip #220997	379.44
46. Bill for Georgia's Easycall pager	1,605.09
47. Security guard services for May 16-31	4,905.00
48. Globe bill for cellular phone from April 18, 1997 to May 17, 1997	5,543.98

49. Bill of cellular phone registered in the name of Paz Encomienda but used by Georgia paid on June 18, 1997	14,169.21
50. Charge for changing the cap of Easycall pager on June 21, 1997	275.00
51. Monthly bill for Georgia's Easycall pager from 7/15/97 to 10/14/97	1,551.00
52. Water bill for April-May 1997 paid on June 25, 1997	1,728.31
53. Cebu Cable bill paid on 6/25/97	380.00
54. PLDT bill for the telephone in Georgia's residence	2,097.98
55. Electric bill paid on 6/25/97	1,964.43
56. Purchase of steel cabinet on 6/25/97	2,750.00
57. Airbill of JRS in sending the cap of Easycall pager	20.00
58. Bill for the cellphone in the name of Paz Encomienda but used by Georgia, June to July 8, 1997	8,630.11
59. Penalty for downgrading of executive line of cellphone	1,045.00
60. Globe cellphone bill paid on 9/10/97	1,903.00
61. Charge for downgrading of cellphone plan from Advantage to Basic	660.00
62. Penalty for Easycall 11/17/97	1,248.50

On April 1, 1997, Jalandoni borrowed ₱1 Million from Encomienda and promised that she would pay the same when her money in the bank matured. Thereafter, Encomienda went to Manila to attend the hearing of Jalandoni's *habeas corpus* case before the CA where ₱100,000.00 more was requested. On May 26, 1997, now crying, Jalandoni asked if Encomienda could lend her an additional ₱900,000.00. Encomienda still acceded, albeit already feeling annoyed. All in all, Encomienda spent around ₱3,245,836.02 and $6,638.20 for Jalandoni.

When Jalandoni came back to Cebu on July 14, 1997, she never informed Encomienda. Encomienda then later gave

Jalandoni six (6) weeks to settle her debts. Despite several demands, no payment was made. Jalandoni insisted that the amounts given were not in the form of loans. When they had to appear before the *Barangay* for conciliation, no settlement was reached. But a member of the *Lupong Tagapamayapa* of *Barangay* Kasambagan, Laureano Rogero, attested that Jalandoni admitted having borrowed money from Encomienda and that she was willing to return it. Jalandoni said she would talk to her lawyer first, but she never came back. Hence, Encomienda filed a complaint. She impleaded Luis as a necessary party, being Georgia's husband.

For her defense, Jalandoni claimed that there was never a discussion or even just an allusion about a loan. She confirmed that Encomienda would indeed deposit money in her bank account and pay her bills in Cebu. But when asked, Encomienda would tell her that she just wanted to extend some help and that it was not a loan. When Jalandoni returned to Cebu, Encomienda wanted to fetch her at the airport but the former refused. This allegedly made Encomienda upset, causing her to eventually demand payment for the amounts originally intended to be gratuitous.

On January 9, 2006, the RTC of Cebu City dismissed Encomienda's complaint, the dispositive portion of which states:

> WHEREFORE**,** in view of the foregoing, this case is hereby dismissed.
>
> SO ORDERED.[5]

Therefore, Encomienda brought the case to the CA. On March 29, 2012, the appellate court granted the appeal and reversed the RTC Decision, to wit:

> **WHEREFORE**, the defendant-appellant's appeal is **GRANTED.** The decision of the trial court dated January 9, 2006 is hereby **REVERSED** and **SET ASIDE** and in its stead render judgment against

[5] *Id.* at 79.

defendant-appellee Georgia Osmeña-Jalandoni ordering the latter to pay plaintiff-appellant Carmen A. Encomienda the following:

1. The sum of Three Million Two Hundred Forty-Five Thousand Eight Hundred Thirty-Six (₱3,245,836.02) Pesos and 02/100 and Six Thousand Six Hundred Thirty-Eight (US$6,638.20) US Dollars and 20/100;

2. Legal interest of Twelve (12%) Percent from August 14, 1997 the date of extrajudicial demand.

3. Attorney's fees and expenses of litigation in the amount of One Hundred Thousand (₱100,000.00) Pesos.

Let a copy of this Decision be served upon defendants-appellees through their respective counsels. The Division Clerk of Court is directed to furnish a copy of this Decision to plaintiff-appellant who, to date, has yet to submit the name of her new counsel following the death of appellant's original counsel of record, Atty. Richard W. Sison.

SO ORDERED.[6]

Jalandoni filed a motion for reconsideration, but the same was denied.[7] Hence, the instant petition.

The sole issue in this case is whether or not Encomienda is entitled to be reimbursed for the amounts she defrayed for Jalandoni.

Jalandoni insists that she never borrowed any amount of money from Encomienda. During the entire time that Encomienda was sending her money and paying her bills, there was not one reference to a loan. In other words, Jalandoni would have the Court believe that Encomienda volunteered to spend about ₱3,245,836.02 and $6,638.20 of her hard-earned money in a span of eight (8) months for her and her family simply out of pure generosity and the kindness of her heart, without expecting anything in return. Such presupposition is incredible, highly unusual, and contrary to common experience, unless the

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[6] *Id*. at 53-54. (Emphasis in the original)

[7] *Id*. at 55-56.

benefactor is a billionaire philanthropist who usually spends his days distributing his fortune to the needy. It is a notable fact that Jalandoni was married to one of the richest *hacienderos* of Iloilo and belong to the privileged and affluent Osmeña family, being the daughter of the late Senator Sergio Osmeña, Jr. Clearly then, Jalandoni is not one to be a convincing object of anyone's charitable acts, especially not from someone like Encomienda who has not been endowed with such wealth and powerful pedigree.

The appellate court aptly pointed out that when Encomienda gave a Barbie doll to Jalandoni's daughter, she was quick to send a letter acknowledging receipt and thanking Encomienda for the simple gift. However, not once did Jalandoni ever send a simple note or letter, let alone a card, expressing her gratitude towards Encomienda for the countless instances she received various amounts of money supposedly given to her as gifts.

Jalandoni also contends that the amounts she received from Encomienda were mostly provided and paid without her prior knowledge and thus she could not have consented to any loan agreement. She relies on the trial court's finding that Encomienda's claims were not supported by any documentary evidence. It must be stressed, however, that the trial court merely found that no documentary evidence was offered showing Jalandoni's authorization or undertaking to pay the expenses. But the second paragraph of Article 1236 of the Civil Code provides:

x x x x x x x x x

Whoever pays for another may demand from the debtor what he has paid, except that **if he paid without the knowledge or against the will of the debtor**, he can **recover only insofar as the payment has been beneficial to the debtor**.[8]

Clearly, Jalandoni greatly benefited from the purportedly unauthorized payments. Thus, even if she asseverates that Encomienda's payment of her household bills was without her

[8] Emphasis ours.

knowledge or against her will, she cannot deny the fact that the same still inured to her benefit and Encomienda must therefore be consequently reimbursed for it. Also, when Jalandoni learned about the payments, she did nothing to express her objection to or repudiation of the same, within a reasonable time. Even when she claimed that she was prepared with her own money,[9] she still accepted the financial assistance and actually made use of it. While she asserts to have been upset because of Encomienda's supposedly intrusive actions, she failed to protest and, in fact, repeatedly accepted money from her and further allowed her to pay her driver, security guard, househelp, and bills for her cellular phone, cable television, pager, gasoline, food, and other utilities. She cannot, therefore, deny the benefits she reaped from said acts now that the time for restitution has come. The debtor who knows that another has paid his obligation for him and who does not repudiate it at any time, must corollarily pay the amount advanced by such third person.[10]

The RTC likewise harped on the fact that if Encomienda really intended the amounts to be a loan, normal human behavior would have prompted at least a handwritten acknowledgment or a promissory note the moment she parted with her money for the purpose of granting a loan. This would be particularly true if the loan obtained was part of a business dealing and not one extended to a close friend who suddenly needed monetary aid. In fact, in case of loans between friends and relatives, the absence of acknowledgment receipts or promissory notes is more natural and real. In a similar case,[11] the Court upheld the CA's pronouncement that the existence of a contract of loan cannot be denied merely because it was not reduced in writing. Surely, there can be a verbal loan. Contracts are binding between the parties, whether oral or written. The law is explicit that contracts shall be obligatory in whatever form they may have been entered into, provided all the essential requisites for their

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[9] *Rollo*, p. 19.

[10] *Spouses Publico v. Bautista*, 639 Phil. 147, 154 (2010).

[11] *Spouses Tan v. Villapaz*, 512 Phil. 366, 376 (2005).

validity are present. A simple loan or *mutuum* exists when a person receives a loan of money or any other fungible thing and acquires its ownership. He is bound to pay to the creditor the equal amount of the same kind and quality. Jalandoni posits that the more logical reason behind the disbursements would be what Encomienda candidly told the trial court, that her acts were plainly an "unselfish display of Christian help" and done out of "genuine concern for Georgia's children." However, the "display of Christian help" is not inconsistent with the existence of a loan. Encomienda immediately offered a helping hand when a friend asked for it. But this does not mean that she had already waived her right to collect in the future. Indeed, when Encomienda felt that Jalandoni was beginning to avoid her, that was when she realized that she had to protect her right to demand payment. The fact that Encomienda kept the receipts even for the smallest amounts she had advanced, repeatedly sent demand letters, and immediately filed the instant case when Jalandoni stubbornly refused to heed her demands sufficiently disproves the latter's belief that all the sums of money she received were merely given out of charity.

Truly, Jalandoni herself admitted that she received the aforementioned amounts from Encomienda and is merely using her lack of authorization over the payments as her defence. In fact, *Lupong Tagapamayapa* member Rogero, a disinterested third party, confirmed this, saying that during the *barangay* conciliation, Jalandoni indeed admitted having borrowed money from Encomienda and that she would return it. Jalandoni, however, reneged on said promise.

The principle of unjust enrichment finds application in this case. Unjust enrichment exists when a person unfairly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity, and good conscience. There is unjust enrichment under Article 22 of the Civil Code when (1) a person is unjustly benefited, and (2) such benefit is derived at the expense of or with damages to another. The principle of unjust enrichment essentially contemplates payment when there is no duty to pay, and the person who receives the payment has no right to receive

it.[12] The CA is then correct when it ruled that allowing Jalandoni to keep the amounts received from Encomienda will certainly cause an unjust enrichment on Jalandoni's part and to Encomienda's damage and prejudice.

WHEREFORE, **PREMISES CONSIDERED,** the Court **DISMISSES** the petition for lack of merit and **AFFIRMS** the Decision of the Court of Appeals, Cebu City dated March 29, 2012 and its Resolution dated December 19, 2012 in CA-G.R. CV No. 01339, **with MODIFICATION** as to the interest which must be twelve percent (12%) *per annum* of the amount awarded from the time of demand on August 14, 1997 to June 30, 2013, and six percent (6%)[13] *per annum* from July 1, 2013 until its full satisfaction.

SO ORDERED.

Carpio (Chairperson), *Mendoza,* and *Jardeleza, JJ.,* concur.

Leonen, J., on official leave.

SECOND DIVISION

[G.R. No. 212815. March 1, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ENRILE DONIO *y* UNTALAN,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; COMPLAINT OR INFORMATION; THE

[12] *Filinvest Land, Inc., et al. v. Backy, et al.*, 697 Phil. 403, 412-413 (2012).

[13] Pursuant to the Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013; *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

RECITAL OF THE ULTIMATE FACTS AND CIRCUMSTANCES IN THE COMPLAINT OR INFORMATION DETERMINES THE CHARACTER OF THE CRIME AND NOT THE CAPTION OR PREAMBLE OF THE INFORMATION OR THE SPECIFICATION OF THE PROVISION OF THE LAW ALLEGED TO HAVE BEEN VIOLATED.— [T]he CA noted that the prosecution should have filed an Information for the special complex crime of qualified carnapping in aggravated form. While it is necessary that the statutory designation be stated in the information, a mistake in the caption of an indictment in designating the correct name of the offense is not a fatal defect as it is not the designation that is controlling but the facts alleged in the information which determines the real nature of the crime. Recently, it was held that failure to designate the offense by the statute or to mention the specific provision penalizing the act, or an erroneous specification of the law violated, does not vitiate the information if the facts alleged therein clearly recite the facts constituting the crime charged. The recital of the ultimate facts and circumstances in the complaint or information determines the character of the crime and not the caption or preamble of the information or the specification of the provision of the law alleged to have been violated. In the case at bar, the acts alleged to have been committed by Donio are averred in the Information, and the same described the acts defined and penalized under Sections 2 and 14 of R.A. 6539, as amended.

2. CRIMINAL LAW; AN ACT PREVENTING AND PENALIZING CARNAPPING (REPUBLIC ACT NO. 6539, AS AMENDED); ELEMENTS OF CARNAPPING; PRESENT.— The elements of carnapping as defined and penalized under the R.A. No. 6539, as amended are the following: 1. That there is an actual taking of the vehicle; 2. That the vehicle belongs to a person other than the offender himself; 3. That the taking is without the consent of the owner thereof; or that the taking was committed by means of violence against or intimidation of persons, or by using force upon things; and 4. That the offender intends to gain from the taking of the vehicle. x x x. Records show that all the elements of carnapping in the instant case are present and proven during the trial.

3. ID.; ID.; CARNAPPING WITH HOMICIDE; TO PROVE THE SPECIAL COMPLEX CRIME OF CARNAPPING

WITH HOMICIDE, THERE MUST BE PROOF NOT ONLY OF THE ESSENTIAL ELEMENTS OF CARNAPPING, BUT ALSO THAT IT WAS THE ORIGINAL CRIMINAL DESIGN OF THE CULPRIT AND THE KILLING WAS PERPETRATED IN THE COURSE OF THE COMMISSION OF THE CARNAPPING OR ON THE OCCASION THEREOF.— Under the last clause of Section 14 of the R.A. 6539, as amended, the prosecution has to prove the essential requisites of carnapping and of the homicide or murder of the victim, and more importantly, it must show that the original criminal design of the culprit was carnapping and that the killing was perpetrated "*in the course of the commission of the carnapping or on the occasion thereof*." In other words, to prove the special complex crime of carnapping with homicide, there must be proof not only of the essential elements of carnapping, but also that it was the original criminal design of the culprit and the killing was perpetrated in the course of the commission of the carnapping or on the occasion thereof.

4. ID.; ID.; ID.; UNLAWFUL TAKING IS THE TAKING OF THE MOTOR VEHICLE WITHOUT THE CONSENT OF THE OWNER, OR BY MEANS OF VIOLENCE AGAINST OR INTIMIDATION OF PERSONS, OR BY USING FORCE UPON THINGS, AND IT IS DEEMED COMPLETE FROM THE MOMENT THE OFFENDER GAINS POSSESSION OF THE THING, EVEN IF HE HAS NO OPPORTUNITY TO DISPOSE OF THE SAME.— "Unlawful taking" or *apoderamiento* is the taking of the motor vehicle without the consent of the owner, or by means of violence against or intimidation of persons, or by using force upon things. It is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same. Section 3 (j), Rule 131 of the Rules of Court provides the presumption that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act.

5. ID.; ID.; ID.; THE PRESUMPTION THAT A PERSON FOUND IN POSSESSION OF THE PERSONAL EFFECTS BELONGING TO THE PERSON ROBBED AND KILLED IS CONSIDERED THE AUTHOR OF THE AGGRESSION, THE DEATH OF THE PERSON, AS WELL AS THE ROBBERY COMMITTED, HAS BEEN INVARIABLY

LIMITED TO CASES WHERE SUCH POSSESSION IS EITHER UNEXPLAINED OR THAT THE PROFFERED EXPLANATION IS RENDERED IMPLAUSIBLE IN VIEW OF INDEPENDENT EVIDENCE INCONSISTENT THERETO.— The presumption that a person found in possession of the personal effects belonging to the person robbed and killed is considered the author of the aggression, the death of the person, as well as the robbery committed, has been invariably limited to cases where such possession is either unexplained or that the proffered explanation is rendered implausible in view of independent evidence inconsistent thereto. The said principle may be applied in this case as the concept of unlawful taking in theft, robbery and carnapping being the same. Here, Donio failed to produce the vehicle's papers at the checkpoint. He impersonated the victim before the police officers when his identity was asked, and left under the guise of getting the said documents. It was also established that he and the others were strangers to Rodrigo. Donio's unexplained possession, coupled with the circumstances proven in the trial, therefore, raises the presumption that he was one of the perpetrators responsible for the unlawful taking of the vehicle and Raul's death.

6. ID.; ID.; ID.; INTENT TO GAIN OR *ANIMUS LUCRANDI*, WHICH IS AN INTERNAL ACT, IS PRESUMED FROM THE UNLAWFUL TAKING OF THE MOTOR VEHICLE.— Intent to gain or *animus lucrandi*, which is an internal act, is presumed from the unlawful taking of the motor vehicle. Actual gain is irrelevant as the important consideration is the intent to gain. The term "gain" is not merely limited to pecuniary benefit but also includes the benefit which in any other sense may be derived or expected from the act which is performed. Thus, the mere use of the thing which was taken without the owner's consent constitutes gain. Donio's intent to gain from the carnapped tricycle was proven as he and his companions were using it as means of transportation when they were confronted by the Concepcion police officers.

7. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; CIRCUMSTANTIAL EVIDENCE; TO JUSTIFY A CONVICTION BASED ON CIRCUMSTANTIAL EVIDENCE, THE COMBINATION OF CIRCUMSTANCES MUST BE INTERWOVEN IN SUCH A WAY AS TO

LEAVE NO REASONABLE DOUBT AS TO THE GUILT OF THE ACCUSED; REQUISITES; PRESENT.— The lack or absence of direct evidence does not necessarily mean that the guilt of the accused can no longer be proved by any other evidence. Circumstantial, indirect or presumptive evidence, if sufficient, can replace direct evidence as provided by Section 4, Rule 133 of the Rules of Court, which, to warrant the conviction of an accused, requires that: (a) there is more than one (1) circumstance; (b) the facts from which the inferences are derived have been proven; and (c) the combination of all these circumstances results in a moral certainty that the accused, to the exclusion of all others, is the one who committed the crime. Hence, to justify a conviction based on circumstantial evidence, the combination of circumstances must be interwoven in such a way as to leave no reasonable doubt as to the guilt of the accused. After a careful perusal of the records, this Court finds that the confluence of the x x x pieces of circumstantial evidence, consistent with one another, establishes Donio's guilt beyond reasonable doubt.

8. ID.; ID.; ID.; FLIGHT IS AN INDICATION OF GUILT OR OF A GUILTY MIND.— [W]hen Donio was brought to the police station, he asked permission from the officers to get the registration papers but never returned. Undoubtedly, Donio's flight is an indication of his guilt or of a guilty mind. Indeed, the wicked man flees though no man pursueth, but the righteous are as bold as a lion.

9. ID.; ID.; CREDIBILITY OF WITNESSES; THE FACTUAL FINDINGS OF THE APPELLATE COURT GENERALLY ARE CONCLUSIVE, AND CARRY EVEN MORE WEIGHT WHEN SAID COURT AFFIRMS THE FINDINGS OF THE TRIAL COURT, ABSENT ANY SHOWING THAT THE FINDINGS ARE TOTALLY DEVOID OF SUPPORT IN THE RECORDS, OR THAT THEY ARE SO GLARINGLY ERRONEOUS AS TO CONSTITUTE GRAVE ABUSE OF DISCRETION.— This Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses. The factual findings of the appellate court generally are conclusive, and carry even more weight when said court affirms the findings

of the trial court, absent any showing that the findings are totally devoid of support in the records, or that they are so glaringly erroneous as to constitute grave abuse of discretion. In the case at bar, the RTC, as affirmed by the CA, gave credence to the testimony of the prosecution witness. Records are bereft of evidence which showed ill-will or malicious intent on the part of SPO4 Taberdo. In absence of evidence to the contrary, this Court finds that the RTC and the CA did not err in the findings of facts and the credibility of the witnesses.

10. ID.; ID.; DEFENSE OF ALIBI; TO PROSPER, THE ACCUSED MUST ESTABLISH THAT HE WAS NOT AT THE *LOCUS DELICTI* AT THE TIME THE OFFENSE WAS COMMITTED, AND IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE AT THE SCENE AT THE TIME OF ITS COMMISSION.— No jurisprudence in criminal law is more settled than that alibi is the weakest of all defenses, for it is easy to contrive and difficult to disprove, and for which reason, it is generally rejected. For the alibi to prosper, the accused must establish the following: (1) he was not at the *locus delicti* at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission. It must be supported by credible corroboration from disinterested witnesses, and if not, is fatal to the accused.

11. ID.; ID.; ID.; ACCUSED'S UNCORROBORATED ALIBI AND DENIAL MUST BE BRUSHED ASIDE WHERE THE PROSECUTION HAS SUFFICIENTLY AND POSITIVELY ASCERTAINED HIS IDENTITY.— When he was confronted with his inconsistency, Donio clarified that he was in Capas, Tarlac and was fetched by his wife in the evening to attend to his sick child. We note, however, the proximity of the area of Donio's residence with the Barangay Dapdap and Sta. Lucia Resettlement area where the victim was found dead. To buttress his defense of alibi, Donio could have presented the testimony of a fellow plantation worker or any disinterested witness who could have substantiated the same. Aside from his bare allegations, he failed to present convincing evidence of the physical impossibility for him to be at the scene at the time of carnapping. Similarly, this Court is unconvinced of his insistence that he was tortured in view of lack of any evidence to validate the same. Thus, the uncorroborated alibi and denial of Donio must be brushed aside in light of the fact that the prosecution

has sufficiently and positively ascertained his identity. It is only axiomatic that positive testimony prevails over negative testimony.

12. CRIMINAL LAW; AN ACT PREVENTING AND PENALIZING CARNAPPING (RA No. 6539, AS AMENDED); CARNAPPING WITH HOMICIDE; PROPER PENALTY.— The prosecution established through sufficient circumstantial evidence that the accused was indeed one of the perpetrators of the crime of carnapping with homicide. x x x. The RTC is correct in imposing the penalty of *reclusion perpetua* considering that there was no alleged and proven aggravating circumstance. However, in line with the recent jurisprudence, in cases of special complex crimes like carnapping with homicide, among others, where the imposable penalty is *reclusion perpetua*, the amounts of civil indemnity, moral damages, and exemplary damages are pegged at ₱75,000.00 each. This Court orders Donio to pay ₱50,000.00 as temperate damages in lieu of the award of ₱25,000.00 as actual damages. Also, Donio is ordered to pay the heirs of Raul interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of the Decision.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERALTA, *J.*:

This is an appeal from the November 4, 2013 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 05418, which affirmed the Decision[2] dated January 24, 2012 of the Regional

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[1] Penned by Associate Justice Danton Q. Bueser, with Associate Justices Amelita G. Tolentino and Rodil V. Zalameda, concurring, *rollo*, pp. 2-12.

[2] Penned by Presiding Judge Ma. Angelica T. Paras-Quiambao, CA *rollo*, pp. 42-61.

Trial Court (*RTC*), Branch 59, Angeles City in Criminal Case No. 04-594.

The facts are as follows:

Accused-appellant Enrile Donio y Untalan (*Donio*) was charged with violation of Republic Act (*R.A.*) No. 6539 otherwise known as Anti-Carnapping Act of 1972, as amended by R.A. No. 7659. Co-accused Val Paulino (*Paulino*) and one @Ryan (*Ryan*), both remains at large, were similarly charged. The accusatory portion of the Information reads:

> That on or about the 26th day of November 2003, in the Municipality of Mabalacat, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with intent of gain and without the knowledge and consent of the owner, did then and there willfully, unlawfully and feloniously take, steal and carry away with them one (1) Honda TMX 155 tricycle, colored black and with Body No. 817, valued at Ninety Six Thousand ([₱]96,000.00) Pesos, Philippine Currency, and on the occasion thereof, Raul L. Layug, being the driver and owner of the said Honda TMX 155 tricycle, was killed with the use of a mini jungle bolo.
>
> Contrary to law.[3]

Pending Donio's arraignment, PO1 Ernessito N. Bansagan and the National Bureau of Investigation, Central Luzon Regional Office submitted the returns on the Warrant of Arrest against Ryan and Paulino, respectively, stating that the said persons could not be located at the given addresses, and requested for alias warrants against them. The trial court issued the Alias Warrant of Arrest against accused Ryan on September 4, 2004 and against Paulino on November 4, 2004.[4]

At his arraignment, Donio, assisted by his counsel *de oficio*, pleaded not guilty to the offense charged. During the pre-trial conference, it was stipulated that Donio is the same person

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[3] *Id.* at 42.

[4] *Id.* at 43.

whose name appears in the Information and was arraigned before that court.

Thereafter, the trial on the merits ensued.

On November 26, 2003, six police officers of the Concepcion Police Station, Tarlac City, headed by SPO4 Leodegario Taberdo (*SPO4Taberdo*), conducted a checkpoint along the junction of MacArthur Highway in relation to the campaign of the Philippine National Police against hijacking, carnapping, and kidnapping, hailing cargo trucks and closed vans and issuing cards to southbound vehicles.[5]

At 2:30 in the morning on November 26, 2003, a speeding tricycle abruptly stopped a few meters from the checkpoint and caught the attention of the police officers. SPO4Taberdo and two others approached the vehicle. The driver, later identified as Donio, was noticeably agitated while repeatedly kicking the starter of the tricycle. When asked for his identity, he introduced himself as Raul Layug (*Raul*) and then handed to SPO4Taberdo a temporary license bearing the said name. The police officers asked the driver and his companions co-accused Paulino and Ryan to bring the vehicle, a Honda TMX 155 tricycle with Body No. 817, to the checkpoint when they failed to produce its certificate of registration and the official receipt.[6]

Upon visual search of the vehicle, they discovered a bloodstained mini jungle bolo inside. They seized the tricycle and the bolo, and then brought the three to the police station. At 9 o'clock in the morning, Donio asked permission to leave in order to get the registration papers. The officers allowed him, however, he did not return.[7]

Meanwhile, around 6:30 in morning of the same date, Rodrigo Layug (*Rodrigo*) was searching for his brother Raul, the victim, who has not returned home since last night. Raul was the driver

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[5] *Id.* at 46.

[6] *Id.*

[7] *Id.*

of Rodrigo's Honda TMX 155 tricycle with Body No. 817. Rodrigo met with his tricycle driver cousin from Mawaque to ask him if he saw his brother. His cousin accompanied him to Barangay Madapdap where they found the remains of Raul. Words spread about his death. Thereafter, a tricycle driver informed them that he saw a vehicle similar to Rodrigo's at the Concepcion Police Station. Rodolfo, Raul and Rodrigo's other brother, went to the station where he learned that Paulino and Ryan were released.[8]

Sometime in December 2003, the brothers returned to the station upon learning that Donio was apprehended. On December 7, 2003, the Chief of Police summoned SPO4 Taberdo to identify the driver who asked permission to retrieve the registration papers but did not return at the Concepcion Police Station. Upon seeing the Donio, the disgruntled SPO4 Taberdo asked him, "Why did you do that?" He was referring to the incident when Donio did not return. It was also that same day that he learned Donio's real identity.[9]

Dr. Reynaldo C. Dizon (*Dr. Dizon*) conducted the post-mortem examination of Raul's body and determined that he sustained stab wounds caused by a sharp instrument.

Defense's sole witness, Donio, a 35-year-old grass cutter and a resident of Madapdap, Mabalacat, Pampanga, denied the accusations. As a sugarcane plantation worker, he has a long palang for harvesting and cutting. It was not similar to the sharp and pointed mini jungle bolo. As a stay-in plantation worker, he does not leave the workplace for six months. His wife visits him instead.

On November 24, 2003, he was harvesting sugarcane in Capas, Tarlac. However, from the evening of November 25, 2003 until the next day, he was at home after his wife fetched him to tend to their sick child. He first learned of the carnapping charge when the police officers came to his house looking for a certain

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[8] *Id.* at 45.

[9] *Supra* note 5.

Val Paulino. He was taken to the municipal hall where he was investigated and detained for five days. Three officers beat and electrocuted him for three hours forcing him to admit the crime.[10]

The RTC convicted Donio of the crime of carnapping with homicide. The dispositive portion of the decision reads:

> WHEREFORE, the Court finds the accused ENRILE U. DONIO guilty beyond reasonable doubt of the offense of Carnapping as defined in Section 2 and penalized under Section 14 of Republic Act No. 6539, as amended by Republic Act No. 7659, and hereby sentences him to suffer the penalty of *reclusion perpetua*, with credit of his preventive imprisonment.
>
> Accused ENRILE U. DONIO is further ordered to pay the heirs of the victim Raul L. Layug the following amounts: Fifty thousand pesos ([₱]50,000.00) as civil indemnity and Twenty five thousand pesos ([₱]25,000.00) as actual damages.
>
> No costs.
>
> SO ORDERED.[11]

The trial court ruled that the prosecution established all the elements of the crime. Donio failed to substantiate his presence at another place at the time of the perpetration of the offense or the physical impossibility of his presence at the *locus criminis* or its immediate vicinity at the time of the incident.[12] Under the Rules, SPO4 Taberdo's action as police officer enjoys the presumption of regularity. In absence of evidence showing that he was motivated by bad faith or ill-will to testify against Donio, SPO4 Taberdo's categorical identification of the accused stands.[13]

In a Decision dated November 4, 2013, the CA denied Donio's appeal and affirmed the decision of the RTC. The CA found his averment that he was taken from his house, tortured and made to sign a blank sheet of paper as highly implausible. His

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[10] *Id.* at 49.

[11] *Id.* at 61.

[12] *Id.* at 56.

[13] *Id.* at 57.

sworn affidavit was replete with details which were unlikely the product of creative imagination of the police. There was no proof that the police singled him out, or was impelled by an evil or ulterior motive. The said affidavit was voluntarily and freely executed with the assistance of counsel.[14] The *fallo* of the decision states:

WHEREFORE, the appealed Decision is **AFFIRMED**.

SO ORDERED.[15]

Hence, the instant appeal was instituted.

In its Manifestation and Motion in Lieu of Supplemental Brief,[16] the Office of the Solicitor General (*OSG*) informed this Court that it opted not to file a supplemental brief for the same would only be a repetition of the raised arguments considering that all relevant matters regarding Donio's guilt for the crime of carnapping with homicide were extensively argued and discussed in the People's Brief[17] dated July 9, 2013.

Likewise, Donio, through the Public Attorney's Office, manifested his intention not to file a supplemental brief and prayed that the case be deemed submitted for decision.[18]

In essence, the issue to be resolved by this Court in this appeal is whether the prosecution has successfully proven beyond reasonable doubt that Donio is guilty of the crime of carnapping with homicide.

After a judicious review of the records and the submissions of the parties, this Court finds no cogent reason to reverse Donio's conviction.

At the outset, the CA noted that the prosecution should have filed an Information for the special complex crime of qualified

[14] *Rollo* p. 8.

[15] *Id.* at 12. (Emphasis in the original)

[16] *Id.* at 22-24.

[17] CA *rollo,* pp. 71-91.

[18] *Rollo,* pp. 27-28.

carnapping in aggravated form.[19] While it is necessary that the statutory designation be stated in the information, a mistake in the caption of an indictment in designating the correct name of the offense is not a fatal defect as it is not the designation that is controlling but the facts alleged in the information which determines the real nature of the crime.[20] Recently, it was held that failure to designate the offense by the statute or to mention the specific provision penalizing the act, or an erroneous specification of the law violated, does not vitiate the information if the facts alleged therein clearly recite the facts constituting the crime charged.[21] The recital of the ultimate facts and circumstances in the complaint or information determines the character of the crime and not the caption or preamble of the information or the specification of the provision of the law alleged to have been violated.[22] In the case at bar, the acts alleged to have been committed by Donio are averred in the Information, and the same described the acts defined and penalized under Sections 2 and 14 of R.A. 6539, as amended.

The elements of carnapping as defined and penalized under the R.A. No. 6539, as amended are the following:

1. That there is an actual taking of the vehicle;
2. That the vehicle belongs to a person other than the offender himself;
3. That the taking is without the consent of the owner thereof; or that the taking was committed by means of violence against or intimidation of persons, or by using force upon things; and
4. That the offender intends to gain from the taking of the vehicle.[23]

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[19] *Supra* note 16.

[20] *People v. Bali-balita*, 394 SCRA 790, 814 (2000).

[21] *People v. Padit,* G.R. No. 202978, February 1, 2016.

[22] *Id.*

[23] *People v. Bernabe and Garcia*, 448 Phil. 269, 280 (2003).

Under the last clause of Section 14 of the R.A. 6539, as amended, the prosecution has to prove the essential requisites of carnapping and of the homicide or murder of the victim, and more importantly, it must show that the original criminal design of the culprit was carnapping and that the killing was perpetrated *"in the course of the commission of the carnapping or on the occasion thereof."*[24] In other words, to prove the special complex crime of carnapping with homicide, there must be proof not only of the essential elements of carnapping, but also that it was the original criminal design of the culprit and the killing was perpetrated in the course of the commission of the carnapping or on the occasion thereof.[25]

Records show that all the elements of carnapping in the instant case are present and proven during the trial.

The tricycle was definitely ascertained to belong to Rodrigo, as evidenced by a Deed of Conditional Sale in his favor.[26] Donio was found driving the vehicle in the early morning of November 26, 2003, the same day Rodrigo was looking for his missing brother Raul. Also, SPO4 Taberdo positively identified Donio as the driver he flagged down at the checkpoint in his testimony, *viz.*:

x x x x x x x x x

Q – On or about that time 2:45 early in the morning of November 26, 2003, could you recall if there was any unusual incident that required your attention as Police Officers manning the check-point?
A – Yes, sir.

Q – What is that incident?
A – During that time, we are issuing pass card among vehicles going to South when suddenly a speeding tricycle approaching our PCP its engine suddenly stop.

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[24] *People v. Fabian Urzais y Lanurias,* G.R. No. 207662, April 13, 2016.

[25] *People v. Aquino,* 724 Phil. 739, 757 (2004).

[26] CA *rollo,* p. 44.

Q – Who was driving the tricycle when the engine suddenly stop[s]?
A – The one who gave me the Driver's License was Raul Layug.

Q – If this person who gave his license as Raul Layug is here present today, will you be able to identify him?
A – Yes, sir.

Q – Will you please look around the premises of the Court and point to him.
A – This one, sir. We came to know later on that his real name is Enrile Donio.

INTERPRETER:
Witness pointed to accused Enrile Donio.

x x x x x x x x x[27]

"Unlawful taking" or *apoderamiento* is the taking of the motor vehicle without the consent of the owner, or by means of violence against or intimidation of persons, or by using force upon things. It is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same.[28] Section 3 (j), Rule 131 of the Rules of Court provides the presumption that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act.

The presumption that a person found in possession of the personal effects belonging to the person robbed and killed is considered the author of the aggression, the death of the person, as well as the robbery committed, has been invariably limited to cases where such possession is either unexplained or that the proffered explanation is rendered implausible in view of independent evidence inconsistent thereto.[29] The said principle may be applied in this case as the concept of unlawful taking in theft, robbery and carnapping being the same.[30] Here, Donio

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[27] TSN, May 11, 2006, pp. 8-9.

[28] *People v. Lagat, et al.,* 673 Phil. 351 (2011).

[29] *People v. Geron,* 346 Phil. 14, 25 (1997) (emphasis supplied).

[30] *People v. Bustinera,* G.R. No. 148233, June 8, 2004, 431 SCRA 284.

failed to produce the vehicle's papers at the checkpoint. He impersonated the victim before the police officers when his identity was asked, and left under the guise of getting the said documents. It was also established that he and the others were strangers to Rodrigo. Donio's unexplained possession, coupled with the circumstances proven in the trial, therefore, raises the presumption that he was one of the perpetrators responsible for the unlawful taking of the vehicle and Raul's death.

Intent to gain or *animus lucrandi*, which is an internal act, is presumed from the unlawful taking of the motor vehicle. Actual gain is irrelevant as the important consideration is the intent to gain. The term "gain" is not merely limited to pecuniary benefit but also includes the benefit which in any other sense may be derived or expected from the act which is performed. Thus, the mere use of the thing which was taken without the owner's consent constitutes gain.[31] Donio's intent to gain from the carnapped tricycle was proven as he and his companions were using it as means of transportation when they were confronted by the Concepcion police officers.

Having established that the elements of carnapping are present in the instant case, We now discuss the argument that the circumstantial evidence presented by the prosecution are insufficient to convict Donio of the crime of carnapping with homicide.

He alleges that while it is true that criminal conviction may be predicated on a series of circumstantial evidence, the same must be convincing, plausible and credible. It cannot be discounted that SPO4 Taberdo testified only on the circumstances after the alleged carnapping. He failed to establish his alleged participation prior to or during the actual taking of the vehicle. The facts established by SPO4 Taberdo's testimony – the Concepcion police operatives caught him in possession of the stolen tricycle on November 26, 2003; the tricycle was registered under the name of Rodrigo; and he was in possession of Raul's license – are insufficient bases

[31] *Id.*

and do not lead to an inference exclusively consistent with his guilt beyond reasonable doubt.

Such contention fails scrutiny. The lack or absence of direct evidence does not necessarily mean that the guilt of the accused can no longer be proved by any other evidence. Circumstantial, indirect or presumptive evidence, if sufficient, can replace direct evidence as provided by Section 4, Rule 133 of the Rules of Court, which, to warrant the conviction of an accused, requires that: (a) there is more than one (1) circumstance; (b) the facts from which the inferences are derived have been proven; and (c) the combination of all these circumstances results in a moral certainty that the accused, to the exclusion of all others, is the one who committed the crime.[32] Hence, to justify a conviction based on circumstantial evidence, the combination of circumstances must be interwoven in such a way as to leave no reasonable doubt as to the guilt of the accused.[33]

After a careful perusal of the records, this Court finds that the confluence of the following pieces of circumstantial evidence, consistent with one another, establishes Donio's guilt beyond reasonable doubt:

First, Donio was driving the tricycle when he, Paulino and Ryan were accosted during a checkpoint at the junction of MacArthur Highway by elements of the Concepcion Police Station at around 2:30 in the morning on November 26, 2003;

Second, his possession of the vehicle was not fully explained as he failed to produce its registration papers;

Third, he was in possession of the victim's temporary license. He even presented it and introduced himself as Raul to the police;

Fourth, a bloodstained mini jungle bolo was found inside the tricycle;

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[32] *People v. Bañez y Baylon,* G.R. No. 198057, September 21, 2015.

[33] *People v. Lagat, et al., supra* note 28.

Fifth, Rodrigo ascertained that Raul was the driver of his tricycle, and that he was looking for him on the same day that Donio and the others were flagged down;

Sixth, Raul was last seen driving the tricycle at 10:00 in the evening on November 25, 2003 when he passed by at the Mawaque Terminal at the corner of MacArthur Highway and Mawaque Road.[34]

Seventh, the Bantay Bayan of Madapdap Resettlement found Raul's body at around 6:30 in the morning on November 26, 2003 at a vacant lot towards the road to Sta. Lucia Resettlement corner Barangay Dapdap.

Eighth, Raul sustained multiple stab wounds caused by a sharp instrument as depicted in the post-mortem examination sketch by Dr. Dizon and reflected in the Certificate of Death, which states:

17. CAUSES OF DEATH:

I. Immediate Cause: Cardio respiratory arrest
Antecedent Cause: Hemo-pneumothorax L
Underlying Cause: Penetrating Stab Wounds, Multiple.[35]

Ninth, Donio was subsequently apprehended and SPO4 Taberdo positively identified him as the driver they flagged down at the checkpoint.[36]

Likewise, the victim's lifeless body was found sprawled with multiple stab wounds and was noted in a state of rigor mortis. *Rigor mortis*, which consists in the stiffening of the muscular tissues and joints of the body setting in at a greater or less interval after death, may be utilized to approximate the length of time the body has been dead. In temperate countries, it usually

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[34] Records, p. 11, Advance Information Report, Mabalacat Municipal Police Station.

[35] CA *rollo,* p. 52.

[36] *Id.* at 53-54.

appears three to six hours after death but in warmer countries, it may develop earlier. In tropical countries, the usual duration of *rigor mortis* is twenty-four to forty-eight hours during cold weather and eighteen to thirty-six hours during summer. When *rigor mortis* sets in early it passes off quickly and vice versa.[37]

From the foregoing, it was established that Raul was last seen driving the tricycle at 10:00 in the evening on November 25, 2003, and that his body was discovered at 6:30 in the morning the next day. Considering the condition of the body upon discovery, he could have been killed between 10:00 in the evening and 3:30 in the morning on the next day. Donio and his companions were hailed at the checkpoint at around 2:30[38] in the morning on November 26, 2003 aboard the missing tricycle. Taking into account the distance of the Mawaque Terminal area or of the vacant lot near Barangay Dapdap from the junction of MacArthur Highway in Concepcion, Tarlac and the time they were hailed at the checkpoint, it can be logically concluded that Donio and the others were in contact with Raul during the approximate period of the latter's time of death. Also, it was during that period that they gained possession of the vehicle. Thus, the only rational conclusion that can be drawn from the totality of the foregoing facts and circumstances is that Donio and his companions, to the exclusion of others, are guilty of carnapping the tricycle and of killing Raul in the course thereof.

Moreover, when Donio was brought to the police station, he asked permission from the officers to get the registration papers but never returned. Undoubtedly, Donio's flight is an indication of his guilt or of a guilty mind. Indeed, the wicked man flees though no man pursueth, but the righteous are as bold as a lion.[39]

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[37] *People v. Dulay*, G.R. No. 92600, January 18, 1993, 217 SCRA 103, 119 (1993), citing Solis, *Legal Medicine* 127 [1987 ed.] (underscoring supplied).

[38] 2:45 in other parts of Records.

[39] *People v. Dela Cruz,* 459 Phil. 130, 137 (2003).

This Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses.[40] The factual findings of the appellate court generally are conclusive, and carry even more weight when said court affirms the findings of the trial court, absent any showing that the findings are totally devoid of support in the records, or that they are so glaringly erroneous as to constitute grave abuse of discretion.[41] In the case at bar, the RTC, as affirmed by the CA, gave credence to the testimony of the prosecution witness. Records are bereft of evidence which showed ill-will or malicious intent on the part of SPO4 Taberdo. In absence of evidence to the contrary, this Court finds that the RTC and the CA did not err in the findings of facts and the credibility of the witnesses.

As for Donio's defense of alibi, he argues that it must not be looked with disfavor, as there are instances when the accused may really have no other defense but denial and alibi which, if established to be truth, may tilt the scales of justice in his favor, especially when the prosecution evidence is inherently weak. He insists that he was tortured and subjected to harsh treatment during arrest. He insinuates that the police arrested the first person they suspected without conducting any in-depth investigation.

Donio maintained that he first learned of the carnapping charge when the police came to his house in Madapdap, Mabalacat, Pampanga on December 6, 2003. However, he also alleged that as a stay-in sugarcane plantation worker in Capas, Tarlac with a six-month work period ending in January, he never left the workplace and that his wife visited him instead. Donio testified during direct and cross examination as follows:

x x x x x x x x x

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[40] *People v. Abat,* G.R. No. 202704, April 2, 2014, 720 SCRA 557, 564.

[41] *Corpuz v. People,* 734 Phil. 353, 391 (2014).

ATTY. LOPEZ
Q: Mr. Witness, prior to your incarceration at the Angeles District Jail, where were you residing?
A: Madapdap, Mabalacat, Pampanga, sir.

Q: On November 25, 2003 at around 10:00 o'clock in the evening to November 26, 2003, do you remember where [you were] on the said dates?
A: Yes, sir.

Q: Where were you, Mr. Witness?
A: At home, sir.

Q: Who were your companions there?
A: My family, sir, my wife and child.

x x x x x x x x x[42]

PROS. HABAN
Q: Where are you working again?
A: Capas

x x x x x x x x x

Q: How about on November 27, 2003, where were you then?
A: At work.

Q: How about on November 25 and 26?
A: At work.

Q: During the whole day?
A: Stay-in.

Q: So you never left work?
A: No, sir.

Q: Never, not even Saturday and Sunday?
A: No, sir.

Q: The whole year of 2003 you never left work?
A: We stayed there for six (6) months.

Q: When is the end of six months period?
A: January.

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[42] TSN, September 24, 2009, p. 6.

x x x x x x x x x[43]

No jurisprudence in criminal law is more settled than that alibi is the weakest of all defenses, for it is easy to contrive and difficult to disprove, and for which reason, it is generally rejected. For the alibi to prosper, the accused must establish the following: (1) he was not at the *locus delicti* at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission.[44] It must be supported by credible corroboration from disinterested witnesses, and if not, is fatal to the accused.[45]

When he was confronted with his inconsistency, Donio clarified that he was in Capas, Tarlac and was fetched by his wife in the evening to attend to his sick child. We note, however, the proximity of the area of Donio's residence with the Barangay Dapdap and Sta. Lucia Resettlement area where the victim was found dead. To buttress his defense of alibi, Donio could have presented the testimony of a fellow plantation worker or any disinterested witness who could have substantiated the same. Aside from his bare allegations, he failed to present convincing evidence of the physical impossibility for him to be at the scene at the time of carnapping. Similarly, this Court is unconvinced of his insistence that he was tortured in view of lack of any evidence to validate the same. Thus, the uncorroborated alibi and denial of Donio must be brushed aside in light of the fact that the prosecution has sufficiently and positively ascertained his identity. It is only axiomatic that positive testimony prevails over negative testimony.[46]

In sum, the prosecution established through sufficient circumstantial evidence that the accused was indeed one of the perpetrators of the crime of carnapping with homicide.

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[43] TSN, August 3, 2010, pp. 3 and 5.

[44] *People v. Regaspi,* G.R. No. 198309, September 7, 2015

[45] *People v. Mallari,* 707 Phil. 267, 281 (2013).

[46] *People v. Torres, et al.,* G.R. No. 189850, September 22, 2014, 735 SCRA 687, 704.

As to the imposable penalty, Section 14 of RA No. 6539, as amended, provides that:

> Sec. 14. *Penalty for Carnapping*. — Any person who is found guilty of carnapping, as this term is defined in Section Two of this Act, shall, irrespective of the value of motor vehicle taken, be punished by imprisonment for not less than fourteen years and eight months and not more than seventeen years and four months, when the carnapping is committed without violence or intimidation of persons, or force upon things; and by imprisonment for not less than seventeen years and four months and not more than thirty years, when the carnapping is committed by means of violence against or intimidation of any person, or force upon things; and **the penalty of *reclusion perpetua* to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof**.[47]

The RTC is correct in imposing the penalty of *reclusion perpetua* considering that there was no alleged and proven aggravating circumstance. However, in line with the recent jurisprudence,[48] in cases of special complex crimes like carnapping with homicide, among others, where the imposable penalty was *reclusion perpetua*, the amounts of civil indemnity, moral damages, and exemplary damages are pegged at ₱75,000.00 each. This Court orders Donio to pay ₱50,000.00 as temperate damages in lieu of the award of ₱25,000.00 as actual damages. Also, Donio is ordered to pay the heirs of Raul interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of the Decision.

WHEREFORE, the Decision dated November 4, 2013 of the Court of Appeals in CA-G.R. CR-HC No. 05418 finding accused-appellant Enrile Donio y Untalan guilty beyond reasonable doubt of the crime of Carnapping with homicide sentencing him to suffer the penalty of *reclusion perpetua* with

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[47] Emphasis supplied.

[48] *People v. Ireneo Jugueta*, G.R. No. 202124, April 5, 2016.

all the accessory penalties, is hereby **AFFIRMED with MODIFICIATIONS:** accused-appellant Donio is **ORDERED** To **PAY** the heirs of Raul L. Layug the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱50,000.00 as temperate damages, and ₱75,000.00 as exemplary damages, plus interest at the rate of six percent (6%) *per annum* from date of finality of the Decision until fully paid.

SO ORDERED.

Carpio (Chairperson) and *Mendoza, JJ.*, concur.

Del Castillo[*] and *Leonen, JJ.*, on official leave.

SECOND DIVISION

[G.R. No. 213137. March 1, 2017]

FLORDALIZA LLANES GRANDE, *petitioner, vs.* **PHILIPPINE NAUTICAL TRAINING COLLEGES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS (CA) ARE GENERALLY NOT SUBJECT TO REVIEW EXCEPT WHEN FINDINGS OF FACTS THEREOF CONTRADICT THOSE OF THE LOWER COURT, OR THE ADMINISTRATIVE BODIES.— It is well settled that in labor cases, the factual findings of the NLRC are accorded respect and even finality by this Court when they coincide with those of the LA and are supported by substantial evidence. In the same vein, factual findings of the CA are generally not

[*] Designated addditional Member in lieu of Associate Justice Francis H. Jardeleza, per raffle dated September 1, 2014.

subject to this Court's review under Rule 45. However, the general rule on the conclusiveness of the factual findings of the CA is also subject to well-recognized exceptions such as where the CA's findings of facts contradict those of the lower court, or the administrative bodies, as in this case.

2. LABOR AND SOCIAL LEGISLATION; THE LABOR CODE; TERMINATION OF EMPLOYMENT; RESIGNATION; FOR THE RESIGNATION OF AN EMPLOYEE TO BE A VIABLE DEFENSE IN AN ACTION FOR ILLEGAL DISMISSAL, AN EMPLOYER MUST PROVE THAT THE RESIGNATION WAS VOLUNTARY, AND ITS EVIDENCE THEREON MUST BE CLEAR, POSITIVE AND CONVINCING.— For the resignation of an employee to be a viable defense in an action for illegal dismissal, an employer must prove that the resignation was voluntary, and its evidence thereon must be clear, positive and convincing. The employer cannot rely on the weakness of the employee's evidence.

3. ID.; ID.; ID.; ID.; DEFINED; IN ORDER TO WITHSTAND THE TEST OF VALIDITY, RESIGNATIONS MUST BE MADE VOLUNTARILY AND WITH THE INTENTION OF RELINQUISHING THE OFFICE, COUPLED WITH AN ACT OF RELINQUISHMENT, AND TO DETERMINE WHETHER THE EMPLOYEES TRULY INTENDED TO RESIGN FROM THEIR RESPECTIVE POSTS, THE TOTALITY OF CIRCUMSTANCES IN EACH PARTICULAR CASE MUST BE CONSIDERED.— Resignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and has no other choice but to dissociate from employment. Resignation is a formal pronouncement or relinquishment of an office, and must be made with the intention of relinquishing the office accompanied by the act of relinquishment. A resignation must be unconditional and with the intent to operate as such. In voluntary resignation, the employee is compelled by personal reason(s) to disassociate himself from employment. It is done with the intention of relinquishing an office, accompanied by the act of abandonment. To determine whether the employee indeed intended to relinquish such employment, the act of the employee before and after the alleged resignation must be considered. We concur with the

findings of the NLRC that the acts of petitioner before and after she tendered her resignation would show that undue force was exerted upon petitioner x x x. In order to withstand the test of validity, resignations must be made voluntarily and with the intention of relinquishing the office, coupled with an act of relinquishment. Therefore, in order to determine whether the employees truly intended to resign from their respective posts, we must take into consideration the totality of circumstances in each particular case.

4. ID.; ID.; ID.; ID.; THE EMPLOYEE'S VIGOROUS PURSUIT OF HER COMPLAINT FOR ILLEGAL DISMISSAL AGAINST THE EMPLOYER IS A CLEAR MANIFESTATION THAT SHE HAS NO INTENTION OF RELINQUISHING HER EMPLOYMENT.— We emphasize that petitioner filed her complaint against the respondent in the NLRC the day after she tendered her resignation. Indeed, voluntary resignation is difficult to reconcile with the filing of a complaint for illegal dismissal. The filing of the complaint belies respondent's claim that petitioner voluntarily resigned. x x x. Petitioner's intention to leave the school, as well as her act of relinquishment, is not present in the instant case. On the contrary, she vigorously pursued her complaint against respondent. It is a clear manifestation that she had no intention of relinquishing her employment. The element of voluntariness in petitioner's resignation is, therefore, missing. By vigorously pursuing the litigation of her action against respondent, petitioner clearly manifested that she has no intention of relinquishing her employment, which act is wholly incompatible to respondent's assertion that she voluntarily resigned.

5. ID.; ID.; ID.; ID.; IN TERMINATION CASES, THE BURDEN OF PROOF RESTS UPON THE EMPLOYER TO SHOW THAT THE DISMISSAL IS FOR A JUST AND VALID CAUSE, AND FAILURE TO DO SO WOULD NECESSARILY MEAN THAT THE DISMISSAL WAS ILLEGAL.— In termination cases, burden of proof rests upon the employer to show that the dismissal is for a just and valid cause, and failure to do so would necessarily mean that the dismissal was illegal. In *Mobile Protective & Detective Agency v. Ompad,* We ruled that should the employer interpose the defense of resignation, it is incumbent upon the employer to

prove that the employee voluntarily resigned. On this point, respondent failed to discharge the burden.

6. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; THE QUANTUM OF PROOF REQUIRED IS SUBSTANTIAL EVIDENCE, WHICH IS MORE THAN A MERE SCINTILLA OF EVIDENCE, BUT SUCH AMOUNT OF RELEVANT EVIDENCE WHICH A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO JUSTIFY A CONCLUSION.— In administrative proceedings, the quantum of proof required is substantial evidence, which is more than a mere scintilla of evidence, but such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. The Court of Appeals may review the factual findings of the NLRC and reverse its ruling if it finds that the decision of the NLRC lacks substantial basis. In the case at bar, petitioner's letter of resignation and the circumstances antecedent and contemporaneous to the filing of the complaint for illegal dismissal are substantial proof of petitioner's involuntary resignation. Taken together, the above circumstances are substantial proof that petitioner's resignation was [in]voluntary.

7. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE COURT IS NOT DUTY-BOUND TO DELVE INTO THE ACCURACY OF THE FACTUAL FINDINGS OF THE LABOR OFFICIALS, IN THE ABSENCE OF A CLEAR SHOWING THAT THE SAME WERE ARBITRARY AND BEREFT OF ANY RATIONAL BASIS; FINDING OF ILLEGAL DISMISSAL, UPHELD.— Factual findings of labor officials who are deemed to have acquired expertise in matters within their respective jurisdictions are generally accorded not only respect, but even finality, and are binding on the Us. Verily, their conclusions are accorded great weight upon appeal, especially when supported by substantial evidence. Consequently, We are not duty-bound to delve into the accuracy of their factual findings, in the absence of a clear showing that the same were arbitrary and bereft of any rational basis. Accordingly, the finding of illegal dismissal by both the LA and the NLRC, as affirmed by the CA in its Decision dated March 27, 2013, must be upheld.

8. LABOR AND SOCIAL LEGISLATION; THE LABOR CODE; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL;

IN AN ILLEGAL DISMISSAL CASE, THE *ONUS PROBANDI* RESTS ON THE EMPLOYER TO PROVE THAT THE DISMISSAL OF AN EMPLOYEE IS FOR A VALID CAUSE; IF THE EVIDENCE PRESENTED BY THE EMPLOYER AND THE EMPLOYEE ARE IN EQUIPOISE, THE SCALES OF JUSTICE MUST BE TILTED IN FAVOR OF THE LATTER.— We reiterate that it is axiomatic in labor law that the employer who interposes the defense of voluntary resignation of the employee in an illegal dismissal case must prove by clear, positive and convincing evidence that the resignation was voluntary; and that the employer cannot rely on the weakness of the defense of the employee. The requirement rests on the need to resolve any doubt in favor of the working man. Furthermore, in an illegal dismissal case, the *onus probandi* rests on the employer to prove that the dismissal of an employee is for a valid cause. Having based its defense on resignation, it is incumbent upon respondent, as employer, to prove that petitioner voluntarily resigned. From the totality of circumstances and the evidence on record, it is clear that respondent failed to discharge its burden. We have held that if the evidence presented by the employer and the employee are in equipoise, the scales of justice must be tilted in favor of the latter.

9. ID.; ID.; ID.; ID.; AN EMPLOYEE UNJUSTLY DISMISSED FROM WORK IS ENTITLED TO REINSTATEMENT AND BACKWAGES.— Under Article 279 of the Labor Code, an employee unjustly dismissed from work is entitled to reinstatement and backwages, among others. Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, that is, to his *status quo ante* dismissal, while the grant of backwages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal. These twin remedies — reinstatement and payment of backwages — make the dismissed employee whole who can then look forward to continued employment. Thus, do these two remedies give meaning and substance to the constitutional right of labor to security of tenure. Petitioner is, therefore, entitled to reinstatement with full backwages.

APPEARANCES OF COUNSEL

Christian George Llanes Melitante for petitioner.
Chenaida Aceret for respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court which seeks to annul and set aside the Amended Decision[2] dated November 7, 2013 and the Resolution dated June 25, 2014 of the Court of Appeals (*CA*) in CA-G.R. SP No. 125444. The CA reversed on reconsideration its Decision[3] dated March 27, 2013 affirming the Decision[4] of the National Labor Relations Commission (*NLRC*), Sixth Division, in NLRC Case No. LAC 08-002290-11 and the Decision[5] of the Labor Arbiter which held that petitioner did not voluntarily resign but was illegally dismissed by respondent.

The factual antecedents are as follows:

Respondent Philippine Nautical Training College, or PNTC, is a private entity engaged in the business of providing maritime training and education.[6] In 1988, respondent employed petitioner as Instructor for medical courses like Elementary First Aid and Medical Emergency.[7] In April 1998, she became the Course

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[1] *Rollo,* pp. 11-41.

[2] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez, concurring; *id.* at 59-73.

[3] *Id.* at 43-57.

[4] *Id.* at 79-87.

[5] *Id.* at 90-96.

[6] *Id.* at 44.

[7] *Id.* at 17.

Director of the Safety Department.[8] Respondent was then principally engaged in providing maritime training for seafarers.[9]

In 2002, petitioner was appointed Course Director for the Training Department of respondent school. In November 2007, she resigned as she had to pursue graduate studies and carry on her plan to immigrate to Canada.[10]

In May 2009, petitioner was invited by respondent to resume teaching since it intended to offer BS Nursing and other courses for maritime training. In July 2009, petitioner was, again, employed by respondent as Director for Research and Course Department. As such, she was responsible for the development, revisions and execution of training programs.[11]

In September 2010, petitioner was given the additional post of Assistant Vice-President (*VP*) for Training Department. For the two positions she was holding, petitioner was given a salary of Thirty Thousand Pesos (₱30,000.00) and an allowance in the amount of Twenty Thousand Pesos (₱20,000.00).[12]

In February 2011, several employees of respondent's Registration Department, including the VP for Training Department were placed under preventive suspension in view of the anomalies in the enlistment of students.[13]

On March 1, 2011, the VP for Corporate Affairs, Frederick Pios (*Pios*), called petitioner for a meeting. Pios relayed to petitioner the message of PNTC's President, Atty. Hernani Fabia, for her to tender her resignation from the school in view of the discovery of anomalies in the Registration Department that

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[8] *Id.* at 90.

[9] *Id.* at 17.

[10] *Id.* at 90.

[11] *Id.* at 19.

[12] *Id.* at 80, 83.

[13] *Id.* at 80.

reportedly involved her. Pios assured petitioner of absolution from the alleged anomalies if she would resign.[14]

Petitioner then prepared a resignation letter, signed it and filed it with the Office of the PNTC President. The respondent accomplished for her the necessary exit clearance.[15] The resignation letter[16] of petitioner reads:

Atty. Hernani Fabia
President
Philippine Nautical Training Institute

Sir,

This is to officially file my resignation effective March 2, 2011 as Director for Research and Course Development/AVP.

Thank you.

(Sgd) Flordaliza L. Grande

In the evening of the same date, petitioner, accompanied by counsel, filed a police blotter for a complaint for unjust vexation against Pios.[17] The police blotter reads in full:

"One (1) Flordaliza Grande y Llanes, 36yo, M, (sic) Asst. Vice Pres. For Training and Dir. For Research and Dev't came here in our office to lodge her [complaint] against Frederick G. Pios Vice Pres. Corporate Affairs.
NOC: UNJUST VEXATION

x x x x x x x x x

Facts of the case:

On or about cited DTPO complainant was called by Ms. Luchi Banaag for meeting by Mr. Frederick G. Pios (suspect) at the office. Mr. Pios was telling her that there were some unfounded anomalies discovered and being attributed to her; complainant was shocked

[14] *Id.* at 80, 91.

[15] *Id.* at 91.

[16] *Id.* at 80-81.

[17] *Id.* at 91.

upon hearing the same. With this, he forced the complainant to file resignation from employment, and in return made her [assurance] to absolve from the said unfounded anomalies, complainant considering that she was being accused of unfounded anomalies, she was force (*sic*) to succumb to the order and execute her resignation letter immediately, and Mr. Pios (suspect) uttered that he was following orders from the President of PNTC Colleges, Hernani Fabia-President, as narrated by complainant."[18]

The next day, March 2, 2011, petitioner accompanied by counsel, filed a complaint for illegal dismissal[19] with prayer for reinstatement with full backwages, money claims, damages, and attorney's fees against respondent.[20]

In her position paper, petitioner alleged that she was forced to resign from her employment. On the other hand, respondent claimed that petitioner voluntarily resigned to evade the pending administrative charge against her.[21]

On July 29, 2011, Labor Arbiter (*LA*) Arthur L. Amansec rendered a Decision, the dispositive portion of which states:

> WHEREFORE, judgment is hereby made finding the complainant's claim of forced resignation established by substantial evidence. Concomitantly, her resignation of March 1, 2011 is hereby declared null and void, and by way of restoring the *status quo*, the respondent school is ordered to reinstate her to her former or substantially equivalent position without loss of seniority rights but without backwages. In case the complainant does not want to be reinstated, she may, upon her option, accept, in lieu of reinstatement, a separation pay amounting to ₱75,000.00 (her half month salary of ₱25,000.00 multiplied by three (3) years of service), plus ten percent (10%) thereof as attorney's fees.
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> Other claims are dismissed for lack of merit.
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> SO ORDERED.[22]

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[18] *Id.* at 91-92.

[19] Annex "F" of the Petition, *id.* at 97-99.

[20] *Rollo*, pp. 44, 81.

[21] *Id.* at 84.

[22] *Id.* at 79-80.

Thereafter, respondent elevated the case before the NLRC, Sixth Division. On February 29, 2012, the NLRC affirmed the Decision of the LA.

A motion for reconsideration was filed by respondent, but the same was denied by the NLRC on May 31, 2012.[23]

Aggrieved, respondent filed a petition for *certiorari* before the CA. In a Decision dated March 27, 2013, the CA affirmed the Decision of the NLRC. The *fallo* states:

> **WHEREFORE**, the petition is **DISMISSED**. In view of the foregoing premises, the assailed *Decision* dated February 29, 2012 and Resolution dated May 31, 2012 of the National Labor Relations Commission in NLRC LAC No. 08-002290-11, are **AFFIRMED** with the **MODIFICATION** that Flordaliza L. Grande is **GRANTED** payment of backwages, computed from the time she was illegally dismissed on March 1, 2011 up to the time she is actually reinstated to her former or substantially equivalent position, and attorney's fees equivalent to 10% of the total monetary award.
>
> SO ORDERED.[24]

A motion for reconsideration was filed by the respondent which was granted by the CA on November 7, 2013 and reversed its Decision dated March 27, 2013. The *decretal* portion of the Amended Decision states:

> **WHEREFORE**, the motion for reconsideration is **GRANTED**. The Court *Decision* dated March 27, 2013 is **RECONSIDERED AND SET ASIDE**. Accordingly, the complaint of respondent Flordaliza L. Grande is **DISMISSED.**
>
> **SO ORDERED**.[25]

Hence, this petition, raising the following errors:

I

x x x The Court of Appeals seriously erred in issuing CONFLICTING DECISIONS (Decision dated 27 March 2013 and Amended Decision

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[23] *Id.* at 13.

[24] *Id.* at 56.

[25] *Id.* at 72-73. (Emphasis in the original)

dated 7 November 2013) composed by the same set of Division Members although the Motion for Reconsideration filed by the private respondent did not present new arguments and/or facts (rather merely reiterating the arguments in the Petition for Certiorari) warranting a re-examination and re-evaluation of its earlier Decision.

II

x x x The Court of Appeals seriously erred in considering the Petition for Certiorari filed by the private respondents despite the absence of any grave abuse of discretion on the part of the Labor Arbiter *a quo* and NLRC, Sixth Division.[26]

In the petition, petitioner averred that respondent did not present any new argument in its motion for reconsideration before the CA as to warrant the reversal of the Decision of the CA dated March 27, 2013. She stressed that she had no real intention of leaving her employment. She was really surprised and shocked when she was forced to resign despite having "wholeheartedly" served the school for years. Her resignation letter which she described as "simply worded" signified her involuntariness in the execution of the document. It was the "undue influence and pressure" exerted upon her by respondent that compelled her to submit the resignation letter. That was the reason why she immediately filed the case for illegal dismissal the day after she tendered her resignation letter. Also, petitioner attached in her petition the Special Cash Audit Report dated March 11, 2011[27] which was the result of the audit conducted on the PNTC upon its request. The report shows that it is the VP for Training/Registrar who was made to account for the irregularity in the collection reports.

In the Comment[28] of respondent to the petition, it maintained that petitioner voluntarily resigned from employment. As her resignation was voluntary, she was not dismissed from her employment. According to respondent, the acts of petitioner –

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[26] *Id.* at 30.

[27] Annex "G" of the Petition, *id.* at 100-106.

[28] *Rollo*, pp. 109-116.

the resignation, the blotter with the police, the continued processing of clearance the day after the resignation and the filing of the illegal dismissal case - showed that she used "calculated reasoning to protect herself from possible charges that PNTC may file against her." Respondent added that, notwithstanding the absence of liability of petitioner in the Special Cash Audit Report, it filed criminal complaints against petitioner.

In the Comment[29] of petitioner to Respondent's Motion to Admit Rejoinder with Rejoinder, she countered that the two complaints filed against her before the Prosecutor's Office by respondent were both dismissed. She reiterated that she had been consistent in all her pleadings that her clearance was processed on the very day that she tendered her resignation letter, and did not extend the day after, since she was then with the NLRC for the filing of the instant complaint.

We grant the petition.

It is well settled that in labor cases, the factual findings of the NLRC are accorded respect and even finality by this Court when they coincide with those of the LA and are supported by substantial evidence.[30]

In the same vein, factual findings of the CA are generally not subject to this Court's review under Rule 45. However, the general rule on the conclusiveness of the factual findings of the CA is also subject to well-recognized exceptions such as where the CA's findings of facts contradict those of the lower court, or the administrative bodies, as in this case. All these considered, we are compelled to make a further calibration of the evidence at hand.[31]

Respondent claimed that petitioner voluntarily resigned from employment. For the resignation of an employee to be a viable

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[29] *Id.* at 141-143.

[30] *Mobile Protective & Detective Agency v. Ompad*, 497 Phil. 621, 628 (2005).

[31] *Vicente v. Court of Appeals, (Former 17th Div.)*, 557 Phil. 777, 785 (2007).

defense in an action for illegal dismissal, an employer must prove that the resignation was voluntary, and its evidence thereon must be clear, positive and convincing. The employer cannot rely on the weakness of the employee's evidence.[32]

Quite notable in the instant case is the fact that respondent was silent as to the alleged meeting with petitioner on March 1, 2011. As in fact, as found by the LA and the NLRC, "*neither Pios nor Fabia came forth through an Affidavit to deny*" the meeting.[33] All that respondent could say is that on March 1, 2011, petitioner "*suddenly and without reason tendered her resignation*". And that, respondent then became suspicious of the "*abruptness*" of the resignation, such that, it conducted an investigation and discovered that petitioner was the one who signed the Enrollment Report, submitted to the Maritime Training Council, which contained names of students who were not officially enrolled with the school.[34]

From the aforesaid statement of respondent, it can be deduced that on March 1, 2011, when petitioner "suddenly" resigned, there was no discovery yet as to the alleged anomaly involving petitioner. This is quite contrary to the statements of respondent in its Comment to the petition, thus:

> 12.7. The action of **Grande** was premeditated. There was no threat employed upon her. **Prior to her resignation, PNTC found out that there were discrepancies in the enrollment reports signed by Grande** and the system database of PNTC as to the list of enrollees. Likewise, there were enrollment reports signed by GRANDE stating that her husband, Nelson Grande, was the assigned professor to a particular course when the latter was, actually, abroad. **When confronted with these discrepancies,** Grande resigned from work and even filed a complaint for unjust vexation apparently to avoid any legal suit to be filed by PNTC against her and to cover up for her misdeeds and that of her husband. x x x.[35]

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[32] *D.M. Consunji Corporation v. Bello,* 715 Phil. 335, 338 (2013).

[33] *Rollo*, p. 93.

[34] *Id.* at 82.

[35] *Id.* at 114. (Emphasis ours)

There was, therefore, an admission by respondent that a confrontation occurred **before** petitioner **"suddenly" tendered** her **resignation**. And that, it was not true that respondent became "suspicious" of the "abruptness" in the resignation which prompted the respondent to conduct an investigation.

Also, quite interesting is the statement of respondent that it was in February 2011 when it discovered that there were questionable transactions involving registration of enrollees, and that respondent found that aside from the employees in the Registration Department, there were also high-ranking officers who were probably involved in the anomalous transaction. And according to respondent, they then discreetly started an investigation on the possible involvement of the officers.[36] If these were true, why did respondent immediately granted clearance to petitioner in a day, if there was then an ongoing investigation on the involvement of high-ranking officers. We should not disregard the fact that petitioner is the Assistant Vice-President for the Training Department.

We do not, therefore, believe the statement of respondent in its comment to the petition that it had no reason to deny clearance to petitioner because the investigation was still ongoing, thus:

> 12.4. The clearance obtained by GRANDE is of no moment. At the time GRANDE resigned and obtained her clearance, the investigation as to those who are liable for the anomalous activities was still ongoing. x x x[37]

As observed by the NLRC, if petitioner was being investigated for an administrative charge, why was she cleared from liabilities. The more logical thing to do is to hold her clearance until all the liabilities have been settled. The haste by which she was cleared by all departments would reveal that respondent really wanted petitioner to go. And it was even admitted by respondent that petitioner still had accountabilities in terms of borrowed books.[38] Why was then petitioner cleared? The logical answer is respondent really wanted petitioner to go.

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[36] NLRC Decision, *id.* at 82.

[37] *Rollo*, p. 113.

[38] *Id.* at 85.

Hence, We echo the ruling of the CA in its Decision dated March 27, 2013:

> x x x. Not a scintilla of evidence was adduced to convinced the labor tribunal that respondent was not illegally terminated. While petitioner argued that the excerpt on the conversation which transpired between respondent and Pios is untrue, this however, was not effectively refuted. The failure of Pios or Fabia to submit an affidavit to disprove that a conversation had actually taken place is fatal, for the burden to prove the fact of resignation lies with the employer.
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> x x x x x x x x x
>
> It is also worthy to note that after respondent tendered her resignation, petitioner immediately approved her clearance form. This is totally incompatible with petitioner's claim that respondent was one of the high-ranking officials who may have participated in the anomalies at school. The more logical and acceptable approach would have been to hold respondent's clearance until she has settled her accountability with the company.[39]

Resignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and has no other choice but to dissociate from employment. Resignation is a formal pronouncement or relinquishment of an office, and must be made with the intention of relinquishing the office accompanied by the act of relinquishment. A resignation must be unconditional and with the intent to operate as such.[40]

In voluntary resignation, the employee is compelled by personal reason(s) to disassociate himself from employment. It is done with the intention of relinquishing an office, accompanied by the act of abandonment. To determine whether the employee indeed intended to relinquish such employment, the act of the employee before and after the alleged resignation must be considered.[41]

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[39] *Id.* at 51-52. (Underscoring ours.)

[40] *Fortuny Garments/Johnny Co v. Castro*, 514 Phil. 317, 323 (2005).

[41] *Vicente v. Court of Appeals, supra* note 31, at 785-786.

We concur with the findings of the NLRC that the acts of petitioner before and after she tendered her resignation would show that undue force was exerted upon petitioner: (1) the resignation letter of petitioner was terse and curt, giving the impression that it was hurriedly and grudgingly written; (2) she was in the thick of preparation for an upcoming visit and inspection from the Maritime Training Council; it was also around that time that she had just requested for the acquisition of textbooks and teaching aids, a fact which is incongruent with her sudden resignation from work;[42] (3) in the evening, she filed an incident report/police blotter before the Intramuros Police Station; and (4) the following day she filed a complaint for illegal dismissal.

In order to withstand the test of validity, resignations must be made voluntarily and with the intention of relinquishing the office, coupled with an act of relinquishment. Therefore, in order to determine whether the employees truly intended to resign from their respective posts, we must take into consideration the totality of circumstances in each particular case.[43]

We emphasize that petitioner filed her complaint against the respondent in the NLRC the day after she tendered her resignation. Indeed, voluntary resignation is difficult to reconcile with the filing of a complaint for illegal dismissal. The filing of the complaint belies respondent's claim that petitioner voluntarily resigned. As held by this Court in *Valdez v. NLRC*[44] which was reiterated in the case of *Fungo v. Lourdes School of Mandaluyong*:[45]

> x x x It would have been illogical for herein petitioner to resign and then file a complaint for illegal dismissal. Resignation is inconsistent with the filing of the said complaint.[46]

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[42] *Rollo*, p. 51.

[43] *SME Bank, Inc. v. De Guzman*,719 Phil. 103, 121 (2013).

[44] 349 Phil. 760, 767 (1998).

[45] 555 Phil. 225 (2007).

[46] *Fungo v. Lourdes School of Mandaluyong*, *supra*, at 233.

Petitioner's intention to leave the school, as well as her act of relinquishment, is not present in the instant case. On the contrary, she vigorously pursued her complaint against respondent. It is a clear manifestation that she had no intention of relinquishing her employment.[47] The element of voluntariness in petitioner's resignation is, therefore, missing.[48]

By vigorously pursuing the litigation of her action against respondent, petitioner clearly manifested that she has no intention of relinquishing her employment, which act is wholly incompatible to respondent's assertion that she voluntarily resigned.[49]

In termination cases, burden of proof rests upon the employer to show that the dismissal is for a just and valid cause, and failure to do so would necessarily mean that the dismissal was illegal. In *Mobile Protective & Detective Agency v. Ompad*,[50] We ruled that should the employer interpose the defense of resignation, it is incumbent upon the employer to prove that the employee voluntarily resigned.[51] On this point, respondent failed to discharge the burden.

In its Amended Decision, the CA did not believe that a conversation took place between petitioner and Pios, the excerpt of which is hereunder reproduced:

"**Pios:** Flor, do you have any idea on why I need to talk to you now? Actually, yung mga nangyayaring gayon, medyo nainvolve ka eh.
Grande: Ako, may involvement sa nangyayari? Well, direct me to the point.

Pios: I was talked by [sic]Atty. Fabia and gave me instructions to talk to you and ask you to resign.
Grande: For what reasons?

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[47] *Id*.

[48] *San Miguel Properties Philippines, Inc. v. Gucaban,* 669 Phil. 288, 300 (2011).

[49] *Molave Tours Corporation v. NLRC,* 320 Phil. 398, 405 (1995).

[50] *Supra* note 30, at 634-635.

[51] *Vicente v. Court of Appeals, supra* note 31.

Pios: Ok, sabihin ko na sa yo, it came to our knowledge that you went to the office of Ricky Ty and asked for a legal advice on what was [sic] happened to Nita.
Grande: Haah! What di totoo yan!

Pios: Well unang nakarating sa amin na balita, and you are even asking Ricky Ty for an employment.
Grande: That's a big lie. Actually red, kilala mo ba ako talaga? Why do I need to seek legal assistance to [sic] other people eh samantalang I have a sister and a nephew who are lawyers? That is not fair. Halatang ploy mo ito sa akin para idawit mo ako sa nangyayari kay Mam Nitz!

Pios: Well, madami pa kasing lumutang na resulta sa investigation. Like this one (showing an Enrollment List Form). Is this your signature?
Grande: O. why?

Pios: Kais [sic] it was noticed that your husband's name was declared here as Instructor for Basic Safety Course. Eh nag check kami ng records sa accounting, the inclusive dates declared eh on board mister mo.
Grande: Hala, buti pa kayo alam nyo ung schedule ng mister ko. Hindi mo kasi alam kung pano ang reporting nyan. Ang ginagawang registration they have to out [sic] a name on that Instructor and Assessor portion ung name ng taong declared officially sa maritime Training Council. Eh wala na sila na malagay na pangalan ng qualified and accredited instructor, that is why nilagay pangalan nya. Hay naku, lahat ng training center ganyan gawa and dating ginagawang PNTI yan due to lack of qualified Instructor. Kung tutuusin nga eh, dapat binayaran nyo pa si Nelson kasi ginagamit ninyo pangalan nya kahit di nya alam. Actually, we did a favor for the company, kulang kayo sa Qualified Instructor eh, so kami na gagawa ng paraan para may ma-declare na Instructor.

Pios: Yeah, we have checked on accounting, di naman sya nabayaran sa ganyan period. Saka I understand what you are trying to say, na iintindihan ko ang proseso.
Grande: Kaya nga Red eh, ang dami nyong accusations sa akin and yet, wala kayang [sic] mapakitang evidence.

Pios: Saka why did you sign?
Grande: Ha? Syempre, wala si Mam Nitz. Saka nag forge ba ako ng pirma ni Mam Nitz? Di ba nakalagay dyan for? Saka ako ang next in line na pipirma pag wala sya. Kelangan ngi–submit ang form sa MTC.

Pios: Another thing Flor, dib a [sic] may na send sa yong text si Nita regarding sa text ni Leah Fabia, na she is not putting her weight around para mapaalis ka dito. Kaso di nya talaga gusto na nandito ka.
Grande: Well, that's not my problem anymore, kayo ang kumontak sa akin then all of a sudden ganyan nyo ako. Tell me honestly, influence ni Leah Fabia itong usapan natin noh?

Pios: No, it was Atty. Fabia who wants it.
Grande: You don't know what you are talking about. It's not fair to me to get this kind of treatment.

Pios: Kaya nga Flor eh, there is no point of staying. Mabait pa nga ako say o [sic] eh, coz I believe in you, kaya lang Flor, utos ng Management eh. Alam mo naman na okay naman tayo, maski ako, di ko gusto itong sinasabi ko say o [sic], kaso I have to obey. I just want to carry out the order.[52]

However, the CA relied on the said conversation excerpt to show that no threat or force was exerted by respondent on petitioner for her to resign from employment, thus:

It is unfathomable how respondent could actually recount every word that was said by her and Pios. To be able to quote such a detailed conversation that was not even recorded or transcribed is absurd, to say the least. As memory is, most often than not, fleeting and momentary, evidentiary weight cannot as easily be accorded to it.

x x x x x x x x x

Again, even assuming that the quoted conversation actually took place, no indication of threat or force can be adduced from the language used by Pios. He did not even warn respondent that she will be terminated if she refused to resign. Quite telling, the conversation between Pios and respondent may well be regarded as a discussion on the irregularities that took place in the company rather than a confrontation to force respondent to resign. There was no clear act of discrimination, insensibility or disdain on the part of Pios so as to force respondent to resign and sever her employment from the company. x x x.

Respondent's eventual act of resigning and thereafter causing the matter to be recorded in the police blotter are appreciated as a well

[52] *Rollo,* pp. 68-70. (Emphasis ours.)

thought-out plan carried out in order to preempt the investigation conducted by petitioner. In fact, right after she tendered her resignation, respondent wasted no time in obtaining a clearance from the different offices of petitioner which left the latter with no sufficient time to verify if she had a hand in the illegal schemes.[53]

We are not persuaded by the reasoning of the CA. While indeed there was no employment of force from the language used by Pios, We are convinced that there was the presence of undue influence exerted on petitioner for her to leave her employment. The conversation showed that respondent wanted to terminate petitioner's employment but would want it to appear that she voluntarily resigned. Undue influence is defined under Article 1337 of the Civil Code, thus:

> Art. 1337. There is undue influence when a person takes improper advantage of his power over the will of another, **depriving the latter of a reasonable freedom of choice.** The following circumstances shall be considered: the confidential, family, spiritual, and **other relations between the parties,** or the fact that the person alleged to have been unduly influenced was suffering from mental weakness, or was ignorant or in financial distress.[54]

As correctly observed by the LA, petitioner's resignation immediately tendered after the conversation is not voluntary. With an order coming from the President of PNTC, no less, undue influence and pressure was exerted upon petitioner.

Petitioner declared in her petition that she "felt lambasted" when she was told about the order of PNTC President for her to resign considering her exemplary performance in the school. She narrated that when she returned to the school in July 2009 as Director for Research and Course Department, the offered courses of the school rose from 29 to 48 courses. As in fact in 2010, she was offered the position of Assistant Vice-President for Training Department.[55] These statements of petitioner were not disputed by respondent in its comment to the petition.

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[53] *Id.* at 70-72.

[54] Emphasis ours.

[55] *Id*. at 20-21.

Indeed, it is very unlikely that petitioner who was in the thick of preparation for an upcoming visit and inspection from the Maritime Training Council and who had just requested for the acquisition of textbooks and teaching aids, and had just submitted a Master Plan to the corporate officers would simply resign voluntarily. She was in the process of compiling the necessary documents and library holdings for submission to the Maritime Training Council. Clearly, her consent was vitiated.[56]

It must be noted that she was not among those preventively suspended in February 2011, which include the Vice-President for Training, in view of the ongoing investigation in the Registration Department. We, therefore, believe that petitioner felt the undue pressure exerted on her to resign from employment despite her "exemplary performance" and having served the school for years. We agree with petitioner that she was then without "proper discernment" when she prepared the one-liner resignation letter.

Also, as a sign that respondent really wanted petitioner to go is the fact that the former immediately issued the latter her clearance showing the signatures from different departments of the school.[57] If petitioner was being investigated for an administrative charge, why was she cleared from liabilities.

In administrative proceedings, the quantum of proof required is substantial evidence, which is more than a mere scintilla of evidence, but such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. The Court of Appeals may review the factual findings of the NLRC and reverse its ruling if it finds that the decision of the NLRC lacks substantial basis.[58]

In the case at bar, petitioner's letter of resignation and the circumstances antecedent and contemporaneous to the filing

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[56] *Fungo v. Lourdes School of Mandaluyong, supra* note 45.

[57] *Rollo,* p. 22.

[58] *Vicente v. Court of Appeals, supra* note 31, at 784-785.

of the complaint for illegal dismissal are substantial proof of petitioner's involuntary resignation. Taken together, the above circumstances are substantial proof that petitioner's resignation was voluntary.

Factual findings of labor officials who are deemed to have acquired expertise in matters within their respective jurisdictions are generally accorded not only respect, but even finality, and are binding on the Us. Verily, their conclusions are accorded great weight upon appeal, especially when supported by substantial evidence. Consequently, We are not duty-bound to delve into the accuracy of their factual findings, in the absence of a clear showing that the same were arbitrary and bereft of any rational basis.[59]Accordingly, the finding of illegal dismissal by both the LA and the NLRC, as affirmed by the CA in its Decision dated March 27, 2013, must be upheld.

We reiterate that it is axiomatic in labor law that the employer who interposes the defense of voluntary resignation of the employee in an illegal dismissal case must prove by clear, positive and convincing evidence that the resignation was voluntary; and that the employer cannot rely on the weakness of the defense of the employee. The requirement rests on the need to resolve any doubt in favor of the working man.[60]

Furthermore, in an illegal dismissal case, the *onus probandi* rests on the employer to prove that the dismissal of an employee is for a valid cause. Having based its defense on resignation, it is incumbent upon respondent, as employer, to prove that petitioner voluntarily resigned. From the totality of circumstances and the evidence on record, it is clear that respondent failed to discharge its burden. We have held that if the evidence presented by the employer and the employee are in equipoise, the scales of justice must be tilted in favor of the latter.[61]

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[59]*Aujero v. Philippine Communications Satellite Corporation,* 679 Phil. 463, 481 (2012).

[60] *D. M. Consunji Corporation v. Rogelio P. Bello, supra* note 32, at 347.

[61] *Mobile Protective & Detective Agency v. Ompad, supra* note 30, at 635.

Under Article 279 of the Labor Code, an employee unjustly dismissed from work is entitled to reinstatement and backwages, among others. Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, that is, to his *status quo ante* dismissal, while the grant of backwages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal. These twin remedies — reinstatement and payment of backwages — make the dismissed employee whole who can then look forward to continued employment. Thus, do these two remedies give meaning and substance to the constitutional right of labor to security of tenure.[62] Petitioner is, therefore, entitled to reinstatement with full backwages.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **GRANTED.** The assailed Amended Decision dated November 7, 2013 and Resolution dated June 25, 2014 of the Court of Appeals in CA-G.R. SP No. 125444, respectively, are hereby **SET ASIDE**. The Decision dated February 29, 2012 and Resolution dated May 31, 2012 of the National Labor Relations Commission in NLRC Case No. LAC 08-002290-11 are **AFFIRMED** with **MODIFICATION** that Flordaliza L. Grande is **GRANTED** payment of backwages, computed from the time she was illegally dismissed on March 1, 2011 up to the time she is actually reinstated to her former or substantially equivalent position, and attorney's fees equivalent to 10% of the total monetary award. Legal interest shall be computed at the rate of six percent (6%) *per annum* of the total monetary award from date of finality of this Decision until full satisfaction.

SO ORDERED.

Carpio (Chairperson), Mendoza, and *Jardeleza, JJ.,* concur.

Leonen, J., on official leave.

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[62] *Verdadero v. Barney Autolines Group of Companies Transport, Inc., et al.,* 693 Phil. 646, 659 (2012).

SECOND DIVISION

[G.R. No. 218463. March 1, 2017]

HENRY R. GIRON, *petitioner, vs.* **HON. EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., HON. SANGGUNIANG PANLUNGSOD OF QUEZON CITY and HON. KAGAWAD ARNALDO A. CANDO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; EXHAUSTION OF ADMINISTRATIVE REMEDIES; BEFORE A PARTY IS ALLOWED TO SEEK INTERVENTION OF THE COURTS, EXHAUSTION OF AVAILABLE ADMINISTRATIVE REMEDIES, LIKE FILING A MOTION FOR RECONSIDERATION, IS A PRE-CONDITION; EXCEPTIONS.— Plain is the rule that before a party is allowed to seek intervention of the courts, exhaustion of available administrative remedies, like filing a motion for reconsideration, is a pre-condition. As held in a catena of cases, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case. This availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Generally, absent any finding of waiver or estoppel, the case is susceptible of dismissal for lack of cause of action. In this case, petitioner Giron raises the issue of whether the condonation doctrine still applies if the public official is elected to a new position. As he has raised a pure question of law, his failure to seek further administrative remedy may be excused. It has been held that the requirement of a motion for reconsideration may be dispensed with in the following instances: (1) **when the issue raised is one purely of law;** (2) **where public interest is involved;** (3) in cases of urgency; and (4) where special circumstances warrant immediate or more direct action.

2. REMEDIAL LAW; COURTS; HIERARCHY OF COURTS; DIRECT RESORT TO THE SUPREME COURT IS

FROWNED UPON IN LINE WITH THE PRINCIPLE THAT THE SUPREME COURT IS THE COURT OF LAST RESORT, AND MUST REMAIN TO BE SO IF IT IS TO SATISFACTORILY PERFORM THE FUNCTIONS CONFERRED TO IT BY THE CONSTITUTION; EXCEPTIONS.— [T]he Court glosses over the failure of the petitioner to properly observe the hierarchy of courts. Under the rules, he should have first brought this to the Court of Appeals through a petition for review under Rule 43. x x x. As a rule, direct resort to this Court is frowned upon in line with the principle that the Court is the court of last resort, and must remain to be so if it is to satisfactorily perform the functions conferred to it by the Constitution. The rule, however, admits of exceptions, namely: "(a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively so small as to make the rule impractical and oppressive; (e) **where the question involved is purely legal and will ultimately have to be decided by the courts of justice;** (f) where judicial intervention is urgent; (g) where the application of the doctrine may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) where the issue of non-exhaustion of administrative remedies has been rendered moot; (j) where there is no other plain, speedy and adequate remedy; (k) where strong public interest is involved; and (1) in quo warranto proceedings."

3. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; ELECTIVE OFFICIALS; ALTHOUGH THE ABANDONMENT OF THE CONDONATION DOCTRINE IS PROSPECTIVE IN APPLICATION, THE DOCTRINE APPLIES TO A PUBLIC OFFICIAL ELECTED TO ANOTHER OFFICE.— The OSG is correct that the condonation doctrine has been abandoned by the Court in *Carpio-Morales*. In the said case, the Court declared the doctrine as unconstitutional, but stressed that its application should only be prospective x x x. In this case, however, Giron insists that although the abandonment is prospective, it does not apply to public officials elected to a different position. On this issue, considering the *ratio decidendi* behind the doctrine,

the Court agrees with the interpretation of the administrative tribunals below that the condonation doctrine applies to a public official elected to another office. The underlying theory is that each term is separate from other terms. Thus, in *Carpio-Morales*, the basic considerations are the following: *first*, the penalty of removal may not be extended beyond the term in which the public officer was elected for each term is separate and distinct; *second*, an elective official's re-election serves as a condonation of previous misconduct, thereby cutting the right to remove him therefor; and *third*, courts may not deprive the electorate, who are assumed to have known the life and character of candidates, of their right to elect officers. In this case, it is a given fact that the body politic, who elected him to another office, was the same. It should be stressed, however, that the doctrine is now abandoned.

APPEARANCES OF COUNSEL

Office of the Solicitor General for respondents.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court seeks the review of the May 13, 2015 Decision[1] of the Office of the President *(OP)* in OP-DC Case No. 15-A-007, which dismissed the appeal of petitioner Henry R. Giron *(Giron)* from the March 13, 2014 Resolution[2] of the City Council of Quezon City *(City Council)*, dismissing the administrative complaint against respondent Arnaldo A. Cando *(Cando)*, then the Barangay Chairman of Capri, Novaliches, Quezon City.

The Antecedents

On November 6, 2012, Giron, together with Marcelo B. Macasinag, Eliseo M. Cruz, Benjamin Q. Osi and Crisanto A.

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[1] *Rollo*, pp. 49-50.

[2] *Id*. at 22.

Canciller, filed before the Ombudsman a complaint for Dishonesty, Grave Abuse of Authority and Violation of Section 389 (b) of Republic Act (*R.A.*) No. 7160[3] against Cando, then the Barangay Chairman of Capri, for illegally using electricity in three (3) of his computer shops.

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[3] The Local Government Code of 1991. SECTION 389. Chief Executive: Powers, Duties, and Functions. —

(a) The punong barangay, as the chief executive of the barangay government, shall exercise such powers and perform such duties and functions, as provided by this Code and other laws.

(b) For efficient, effective and economical governance, the purpose of which is the general welfare of the barangay and its inhabitants pursuant to Section 16 of this Code, the punong barangay shall:

(1) Enforce all laws and ordinances which are applicable within the barangay;

(2) Negotiate, enter into, and sign contracts for and in behalf of the barangay, upon authorization of the sangguniang barangay;

(3) Maintain public order in the barangay and, in pursuance thereof, assist the city or municipal mayor and the sanggunian members in the performance of their duties and functions;

(4) Call and preside over the sessions of the sangguniang barangay and the barangay assembly, and vote only to break a tie;

(5) Upon approval by a majority of all the members of the sangguniang barangay, appoint or replace the barangay treasurer, the barangay secretary, and other appointive barangay officials;

(6) Organize and lead an emergency group whenever the same may be necessary for the maintenance of peace and order or on occasions of emergency or calamity within the barangay;

(7) In coordination with the barangay development council, prepare the annual executive and supplemental budgets of the barangay;

(8) Approve vouchers relating to the disbursement of barangay funds;

(9) Enforce laws and regulations relating to pollution control and protection of the environment;

(10) Administer the operation of the katarungang pambarangay in accordance with the provisions of this Code;

(11) Exercise general supervision over the activities of the sangguniang kabataan;

(12) Ensure the delivery of basic services as mandated under Section 17 of this Code;

(13) Conduct an annual palarong barangay which shall feature traditional

On November 8, 2012, the case was referred to the Office of the Vice Mayor of Quezon City and was calendared for the January 14, 2013 session of the City Council. The case was later endorsed to the Special Investigation Committee on Administrative Cases Against Elective Barangay Officials *(Committee)* for a hearing. On a scheduled hearing on June 30, 2013, only Giron appeared.

The investigation, however, was suspended because of the coming October 2013 Barangay Elections. During the said elections, Cando vied for the position of Barangay Kagawad and won. He assumed office on December 1, 2013.

On March 13, 2014, the City Council adopted the Resolution[4] of the Committee, dated January 24, 2014, recommending the dismissal of the case against Cando for being moot and academic. It cited as basis the doctrine first enunciated in *Pascual v. Provincial Board of Nueva Ecija* (*Pascual*)[5] and reiterated in *Aguinaldo v. Santos* (*Aguinaldo*),[6] where the Court stated that "a public official cannot be removed for administrative misconduct committed during a prior term, since his re-election to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor."[7]

Giron moved for reconsideration, arguing that the doctrine of condonation was only applicable when the re-election of

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sports and disciplines included in national and international games, in coordination with the Department of Education, Culture and Sports;

(14) Promote the general welfare of the barangay; and

(15) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

(b) In the performance of his peace and order functions, the punong barangay shall be entitled to possess and carry the necessary firearm within his territorial jurisdiction, subject to appropriate rules and regulations.

[4] *Rollo*, pp. 23-28.

[5] 106 Phil. 466 (1959).

[6] 287 Phil. 851 (1992).

[7] *Rollo*, p. 26.

the public official was to the same position. On October 27, 2014, the City Council adopted the recommendation of the Committee to deny Giron's motion for reconsideration.[8]

On November 18, 2014, Giron appealed to the OP, where it was docketed as OP-DC Case No. 15-A-007. On May 13, 2015, the OP, through respondent Executive Secretary Pacquito N. Ochoa, Jr., dismissed the appeal for lack of merit. The OP opined that the "condonation rule applied even if [Cando] runs for a different position as long as the wrongdoing that gave rise to his culpability was committed prior to the date of election."[9]

Giron did not move for reconsideration. Instead, he directly filed this petition before this Court. His justification for his disregard of the rule on exhaustion of administrative remedies was that the issues being raised in this petition were purely questions of law or of public interest.

ISSUES

A. WHETHER OR NOT G.R. NO. L-11959 (Pascual Case) STILL LEGAL AND RELEVANT UNDER THE 1987 CONSTITUTION.

B. WHETHER OR NOT G.R. NO. 94115 (Aguinaldo Doctrine) IS UNCONSTITUTIONAL INSOFAR AS IT VIOLATES PUBLIC ACCOUNTABLITY OF 1987 CONSTITUTION AND REPUBLIC ACT 6713 THE CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES.

C. WHETHER OR NOT THE DOCTRINE OF CONDONATION APPLIES TO PUBLIC OFFICIALS REELECTED TO OTHER POSITION[S].[10]

Basically, petitioner Giron wants this Court to revisit the condonation doctrine and prays for the Court:

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[8] *Id.* at 29-35.

[9] *Id.* at 50.

[10] *Id*. at 17.

"1. To declare that G.R. No. L-11959 (*Pascual case*) is irrelevant under the present 1987 Constitution;

2. To nullify G.R. No. 94115 (*Aguinaldo doctrine*) as it contravenes the Public Accountability [provisions] of 1987 Constitution and violates Republic Act [No.] 6713 and Republic Act [No.] 7160; and

3. If [it would be] ruled that the condonation doctrine [would] still [be] valid, it does not apply to reelection to other position."[11]

Respondent Cando disagrees. On procedural grounds, he seeks the dismissal of the petition grounded on Giron's failure to exhaust administrative remedies as no motion for reconsideration was filed with the OP. As to the merits, the respondent asserts that the *Aguinaldo* condonation doctrine applies in his case and that the re-election to office, contemplated under the said doctrine, includes election to a different post.

The OSG, on the other hand, insists that the petition should be dismissed on the ground of violation of the rule on exhaustion of administrative remedies. It points out that the issues raised by Giron have been rendered moot and academic by the Court's ruling in *Conchita Carpio-Morales v. Court of Appeals and Jejomar Erwin S. Binay, Jr.,(Carpio-Morales)*,[12] wherein the *Aguinaldo* doctrine was abandoned but its application was made prospective. Thus, its reliance on the ruling should be respected.

The Ruling of the Court

Procedural Issues

Plain is the rule that before a party is allowed to seek intervention of the courts, exhaustion of available administrative remedies, like filing a motion for reconsideration, is a pre-condition. As held in a *catena* of cases, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been

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[11] *Id.* at 18.

[12] G.R. Nos. 217126-27, November 10, 2015.

completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case. This availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies.[13] Generally, absent any finding of waiver or estoppel, the case is susceptible of dismissal for lack of cause of action.[14]

In this case, petitioner Giron raises the issue of whether the condonation doctrine still applies if the public official is elected to a new position. As he has raised a pure question of law, his failure to seek further administrative remedy may be excused. It has been held that the requirement of a motion for reconsideration may be dispensed with in the following instances: **(1) when the issue raised is one purely of law; (2) where public interest is involved;** (3) in cases of urgency; and (4) where special circumstances warrant immediate or more direct action.[15]

For the same reason, the Court glosses over the failure of the petitioner to properly observe the hierarchy of courts. Under the rules, he should have first brought this to the Court of Appeals through a petition for review under Rule 43. Section 1 thereof reads:

Section 1. Scope. - This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by **any quasi-judicial agency in the exercise of its quasi-judicial functions**. Among these agencies are the Civil Service Commission, Central Board of

[13] *Paat v. Court of Appeals*, 334 Phil. 146, 152 (1997). See also 63C Am. Jur. 2d, 58 which states: Where an administrative remedy is provided by the statute and is intended to be exclusive, a court has no authority to oust the administrative agency of its jurisdiction by hearing the case; therefore, a court that hears such case is acting without jurisdiction, rather than merely committing an error of law, and is subject to prohibition.

An agency may seek prohibition preventing court interference with cases pending before it, and the hardship the agency faces caused by a court order halting its proceedings is sufficient to justify the granting of the writ. (Citations omitted)

[14] *Montanez v. PARAD, Negros Occidental,* 616 Phil. 203 (2009), citing *Paat v. Court of Appeals*, 334 Phil. 146 (1997).

[15] *Alindao v. Hon. Joson*, 332 Phil. 239, 251 (1996).

Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. [Emphasis supplied]

As a rule, direct resort to this Court is frowned upon in line with the principle that the Court is the court of last resort, and must remain to be so if it is to satisfactorily perform the functions conferred to it by the Constitution. The rule, however, admits of exceptions, namely: "(a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively so small as to make the rule impractical and oppressive; (e) **where the question involved is purely legal and will ultimately have to be decided by the courts of justice;** (f) where judicial intervention is urgent; (g) where the application of the doctrine may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) where the issue of non-exhaustion of administrative remedies has been rendered moot; (j) where there is no other plain, speedy and adequate remedy; (k) where strong public interest is involved; and (1) in quo warranto proceedings."[16]

Substantive Issue

The OSG is correct that the condonation doctrine has been abandoned by the Court in *Carpio-Morales*.[17] In the said case, the Court declared the doctrine as unconstitutional, but stressed that its application should only be prospective. Thus:

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[16] *United Overseas Bank of the Phils., Inc. v. Board of Commissioners-HLURB*, G.R. No. 182133, June 23, 2015, 760 SCRA 300, 317 (2015).

[17] G.R. Nos. 217126-27, November 10, 2015.

It should, however, be clarified that **this Court's abandonment of the condonation doctrine should be prospective in application** for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines. Unto this Court devolves the sole authority to interpret what the Constitution means, and all persons are bound to follow its interpretation. As explained in *De Castro v. Judicial Bar Council,*

> Judicial decisions assume the same authority as a statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria that must control the actuations, not only of those called upon to abide by them, but also of those duty-bound to enforce obedience to them.
>
> Hence, while the future may ultimately uncover a doctrine's error, it should be, as a general rule, recognized as "good law" prior to its abandonment. xxx [Emphasis supplied]

In this case, however, Giron insists that although the abandonment is prospective, it does not apply to public officials elected to a different position.

On this issue, considering the *ratio decidendi* behind the doctrine, the Court agrees with the interpretation of the administrative tribunals below that the condonation doctrine applies to a public official elected to another office. The underlying theory is that each term is separate from other terms. Thus, in *Carpio-Morales*, the basic considerations are the following: *first*, the penalty of removal may not be extended beyond the term in which the public officer was elected for each term is separate and distinct;[18] *second*, an elective official's

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[18] Offenses committed, or acts done, during previous term are generally held not to furnish cause for removal and this is especially true where the constitution provides that the penalty in proceedings for removal shall not extend beyond the removal from office, and disqualification from holding office for the term for which the officer was elected or appointed. (67 C.J.S. p. 248, citing *Rice vs. State*, 161 S.W. 2d. 401; *Montgomery v. Nowell*, 40 S.W. 2d. 418; *People ex rel. Bagshaw v. Thompson*, 130 P. 2d. 237; *Board of Com'rs of Kingfisher County vs. Shutler*, 281 P. 222; *State vs. Blake*, 280 P. 388; *In re Fudula*, 147 A. 67; *State vs. Ward*, 43 S.W. 2d. 217).

re-election serves as a condonation of previous misconduct, thereby cutting the right to remove him therefor;[19] and *third*, courts may not deprive the electorate, who are assumed to have known the life and character of candidates, of their right to elect officers. In this case, it is a given fact that the body politic, who elected him to another office, was the same.

It should be stressed, however, that the doctrine is now abandoned. As concluded in the said case,

> Xxx. In consequence, it is high time for this Court to abandon the condonation doctrine that originated from *Pascual*, and affirmed in the cases following the same, such as *Aguinaldo, Salalima, Mayor Garcia*, and *Governor Garcia, Jr.* which were all relied upon by the CA.[20]

WHEREFORE, the petition is **DENIED**. The May 13, 2015 Decision of the Office of the President in OP-DC Case No. 15-A-007, adopting the March 13, 2014 Resolution of the City Council of Quezon City is **AFFIRMED**.

This disposition is, however, without prejudice to any criminal case filed, or may be filed, against Arnaldo A. Cando for theft of electricity.

SO ORDERED.

Carpio (Chairperson), Peralta, and *Jardeleza, JJ.,* concur.

Leonen, J., on official leave.

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[19] That the reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor. (43 *Am. Jur.* p. 45, citing *Atty. Gen. vs. Hasty*, 184 Ala. 121, 63 So. 559, 50 L.R.A. (NS) 553. 273.

[20] *Carpio-Morales v. Court of Appeals*, G.R. Nos. 217126-27, November 10, 2015; citing *Conant v. Grogan* (1887) 6 N.Y.S.R. 322.

SECOND DIVISION

[G.R. No. 220785. March 1, 2017]

MA. LORENA TICONG, *petitioner, vs.* **MANUEL A. MALIM, MINDA ABANGAN and MAY MACAL,** *respondents.*

[G.R. No. 222887. March 1, 2017]

PATROCINIO S. TICONG and WILMA T. LAO, *petitioners, vs.* **MANUEL A. MALIM, MINDA ABANGAN and MAY MACAL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE PUT INTO ISSUE, AS QUESTIONS OF FACT ARE NOT COGNIZABLE BY THE COURT.— [T]he Court cannot overemphasize the principle that in petitions for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be put into issue. Questions of fact are not cognizable by this Court. Notably, the issues raised by the petitioner in this case, such as whether the respondents were the procuring cause of the sale which entitled them to the broker's overprice commission, are factual in nature as they would require this Court to delve into the records of the case and review the evidence presented by the parties in order to properly resolve the dispute.

2. CIVIL LAW; THE CIVIL CODE OF THE PHILIPPINES; OBLIGATIONS AND CONTRACTS; AGENCY; TERM "PROCURING CAUSE," DEFINED; TO BE REGARDED AS THE PROCURING CAUSE OF A SALE, A BROKER'S EFFORTS MUST HAVE BEEN THE FOUNDATION OF THE NEGOTIATIONS WHICH SUBSEQUENTLY RESULTED IN A SALE.— [T]he Court is in complete accord with the RTC and the CA in concluding that the respondents were the procuring cause of the sale. At the very least, the respondents were able to bring together the Ticongs and the Buyer to negotiate and

lay the groundwork for a sale transaction. The term "procuring cause," in describing a broker's activity, refers to a cause originating a series of events which, without break in their continuity, results in the accomplishment of the prime objective of employing the broker - to produce a purchaser ready, willing and able to buy real estate on the owner's terms. To be regarded as the procuring cause of a sale, a broker's efforts must have been the foundation of the negotiations which subsequently resulted in a sale. "The broker must be the efficient agent or the procuring cause of the sale. The means employed by him and his efforts must result in the sale. He must find the purchaser, and the sale must proceed from his efforts acting as broker."

3. ID.; ID.; ID.; ID.; WHEN THERE IS A CLOSE, PROXIMATE AND CAUSAL CONNECTION BETWEEN THE AGENT'S EFFORTS AND THE SALE OF THE PROPERTY, THE AGENTS ARE ENTITLED TO THEIR COMMISSION.— In this case, the role of the respondents in the successful consummation of the sale transaction is undisputed. Indeed, the evidence on record shows that the respondents were instrumental in the sale of the properties of the Ticongs. Without their intervention, no sale would have been consummated. They were the ones who set the sale of the said lots in motion. If not for the respondents, the Buyer would not have known about the lots being sold by the Ticongs. x x x. All [the] circumstances led the Court to conclude that the respondents' actions indeed constituted the procuring cause of the sale. When there is a close, proximate and causal connection between the agent's efforts and the sale of the property, the agents are entitled to their commission.

4. ID.; ID.; ID.; ID.; A CONTRACT IS THE LAW BETWEEN THE PARTIES, AND ITS STIPULATIONS ARE BINDING ON THEM, UNLESS THE CONTRACT IS CONTRARY TO LAW, MORALS, GOOD CUSTOMS, PUBLIC ORDER OR PUBLIC POLICY; RESPONDENTS ARE ENTITLED TO THE OVERPRICE COMMISSION.— Under the [paragraphs 3, 4, and 5 of the MOA], the respondents, as the Second Party, were entitled to a 5% commission if they themselves bought the property for ₱900.00 per square meter or had sold it to a third party for the exact amount of ₱900.00 per square meter. In this case, however, the respondents sold

the property to a third party, the Buyer, for a higher price. The respondents were, thus, entitled to the overprice amount as commission. x x x. Basic is the principle that a contract (the MOA in this case) is the law between the parties, and its stipulations are binding on them, unless the contract is contrary to law, morals, good customs, public order or public policy. The Ticongs, having freely and willingly entered into a contract by executing the MOA, cannot renege on their obligation to pay the overprice commission on the flimsy excuse that the respondents were not licensed brokers who did not spend much money in partially negotiating with the Buyer. Accordingly, the Court finds no reversible error in the findings of the CA and the RTC that the Ticongs were liable to pay the overprice commission to the respondents pursuant to the MOA. The Court is bound by such factual findings in the absence of any compelling reason to reverse the same.

5. ID.; ID.; ID.; INTEREST; INTEREST OF 12% AND 6%, IMPOSED.— Anent the claim for attorney's fees, the CA properly deleted the award, there being no basis for such claim. All awards shall earn interest of 12% per annum from April 2001 until June 30, 2013, and interest of 6% per annum from July 1, 2013 until its full satisfaction.

APPEARANCES OF COUNSEL

Lao VII Law Office for petitioners Patrocinio Ticong and Wilma Lao.

Solis Medina Limpingco and Fajardo Law Offices for petitioner Ma. Lorena Ticong.

Tolentino Law Office for respondents.

D E C I S I O N

MENDOZA, *J.*:

Before the Court are these two (2) petitions for review on *certiorari* under Rule 45 of the Rules of Court, separately filed by Ma. Lorena Ticong *(Ma. Lorena)* docketed as G.R. No. 220785, and by Patrocinio S. Ticong and Wilma Lao *(Patrocinio*

and Wilma), docketed as G.R. No. 222887. These consolidated petitions assail the May 27, 2015 Decision[1] and the September 23, 2015[2] and January 12, 2016[3] Resolutions of the Court of Appeals, Cagayan de Oro City (*CA*) in CA-G.R. CV No. 01838-MIN, which affirmed with modification, the December 3, 2007 Decision[4] of the Regional Trial Court, Branch 11, Davao City (*RTC*), ordering the

petitioners to pay overprice commission to the respondents.

The Antecedents

These consolidated cases originated from a complaint filed before the RTC for collection of sum of money, damages and attorney's fees by Manuel A. Malim *(Malim)*, Minda Abangan *(Abangan)* and May Macal (*Macal*) against Lorenzo Ticong, Patrocinio Ticong and Wilma Ticong Lao *(Ticongs)*. The complaint alleged that Malim was a realty broker/dealer while Abangan and Macal were his associates; that the Ticongs were the registered owners of several parcels of land located in Digos, Davao del Sur, covered by Transfer Certificate of Title *(TCT)* Nos. T-11244, T-11246, T-18686, and T-18687, with a total area of 5,000 square meters *(subject properties)*; that on February 5, 2000, Malim, presenting himself as the authorized representative of the Ticongs, sent a letter of "formal intent to sell" to Jainus C. Perez *(Perez)*, the real estate field supervisor of the Church of Jesus Christ of Latter-Day Saints *(Buyer)*, offering to sell the subject properties for ₱2,000.00 per square

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[1] Penned by Associate Justice Romulo V. Borja, with Associate Justice Oscar V. Badelles and Associate Justice Edward B. Contreras, concurring; *rollo* (G.R. No. 220785), pp. 41-51; *rollo* (G.R. No. 222887), pp. 17-30.

[2] *Rollo* (G.R. No. 220785), pp. 56-58; Penned by Associate Justice Romulo V. Borja with Associate Justice Edgardo T. Lloren and Associate Justice Ronaldo B. Martin, concurring.

[3] *Rollo* (G.R. No. 222887), pp. 47-49; Penned by Associate Justice Romulo V. Borja with Associate Justice Oscar V. Badelles and Associate Justice Ronaldo B. Martin, concurring.

[4] *Rollo* (G.R. No. 220785), pp. 100-105; (G.R. No. 222887) pp. 83-88; penned by Judge Virginia Hofileña-Europa.

meter; and that below Malim's signature were inscribed the words, "NOTED/CONFORMED" with the signature of Lorenzo Ticong above "Lorenzo Ticong, Lot Owner."[5]

Malim, Abangan and Macal *(Malim, et al.)* further averred that on February 11, 2000, they signed the Memorandum of Agreement (*MOA*) authorizing them to "look, negotiate, and sell to any prospective buyer" for their properties on a commission basis; that they were also authorized by the Ticongs to charge an "overprice" on top of the ₱900.00 per square meter price; that the subject properties were eventually sold at ₱1,460.00 per square meter or for the total amount of ₱7,300,000.00; that the sale was made possible due to their efforts which should entitle them to an overprice commission of ₱2,800,000.00 based on the ₱560.00 per square meter overprice; and that the Ticongs, however, paid them only ₱50,000.00 and refused to pay the remaining balance despite demands.[6]

The Ticongs, on the other hand, stressed that Malim, et al. were not entitled to the overprice commission; that the MOA was crafted and solely prepared by Malim, et al. and that they signed the same without comprehending the salient aspects thereof due to their limited education; that the sale of their properties prospered through their own active, direct and personal efforts and was eventually attained when they sued the Buyer; and that Malim, et al. had received not only the amount of ₱50,000.00 but a total of ₱225,000.00. The Ticongs denied that Malim, et al. offered to sell their properties to the Buyer. They pointed out that Malim, et al. were not even licensed realty brokers and considering the questionable and anomalous nature of the MOA, the provision therein with respect to the overprice commission and 5% finders' fee were not valid, binding and enforceable against them.[7]

The Ruling of the RTC

On December 3, 2007, the RTC rendered a decision upholding the validity of the MOA as the parties' expression of their

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[5] *Rollo* (G.R. No. 222887), pp. 17-18.

[6] *Id*. at 18.

[7] *Rollo* (G.R. No. 220785), pp. 92-99; (G.R. No. 222887), pp. 75-81.

intention to enter into a real estate brokerage. It debunked the Ticongs' allegation of fraud in signing the MOA for want of sufficient proof. Lastly, the RTC stressed that it was through the efforts of Malim, et al. that the Ticongs and the Buyer had come together for the finalization of the sale. Thus, it disposed:

> WHEREFORE, in view of the foregoing, the plaintiffs being authorized agent/broker of the defendants by virtue of the Memorandum of Agreement executed by them, judgment is hereby rendered in favor of the plaintiffs ordering the defendants:
>
> 1. To pay the plaintiffs jointly and solidarily the sum of ₱2,750,000.00 with interest from April 2001 until fully paid representing the plaintiffs' commission;
>
> 2. To pay the plaintiffs the sum of ₱100,000.00 as attorney's fees.
>
> Moral and exemplary damages will not be awarded because plaintiffs failed to substantiate their claim.
>
> SO ORDERED.[8]

Not in conformity with the RTC decision, the Ticongs appealed it before the CA.

The Ruling of the CA

In its assailed May 27, 2015 Decision, the CA denied the appeal. In upholding the judgment of the RTC, the CA wrote:

> 1] The claim of the Ticongs that Malim, et al. were not licensed realty brokers did not result in the nullification or invalidation of the MOA, citing the case of *Moldex Realty, Inc. v. Saberon*[9] which declared sale transactions by those who lacked certificates of registration and licenses to sell as valid.
>
> 2] Malim, et al. were entitled to their commission because they were the procuring cause of the sale of the subject properties to the Buyer and, without their intervention, the sale would not have been consummated.

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[8] *Rollo* (G.R. No. 220785), pp. 104-105; (G.R. No. 222887), pp. 87-88

[9] 708 Phil. 314 (2013).

3] A perusal of the MOA revealed that Malim, et al. were entitled to the overprice of ₱560.00 per square meter on top of the Ticongs' selling price of ₱900.00 per square meter or for a total amount of ₱2,800,000.00.

4] The award of attorney's fees by the RTC had no factual and legal basis and, hence, must be deleted.

Thus, the CA decreed:

WHEREFORE, the appeal is DENIED. The December 3, 2007 Decision of the Regional Trial Court (RTC), Branch 11, 11th Judicial Region, Davao City, in Civil Case No. 29,620-2003 is AFFIRMED with the MODIFICATION that the award of attorney's fees is DELETED.

SO ORDERED.[10]

Ma. Lorena, as one of the children and heirs of Lorenzo Ticong,[11] filed a motion for reconsideration which was denied by the CA on September 23, 2015. Patrocinio and Wilma also moved for the reconsideration of the said decision, but their separate motion was denied by the CA in its assailed January 12, 2016 Resolution.

G.R. No. 220785

Undaunted, Ma. Lorena seasonably filed the present petition anchored on the following

GROUND

THE HONORABLE COURT OF APPEALS VIOLATED THE ESTABLISHED LAW AND JURISPRUDENCE ON AGENCY IN AFFIRMING THE TRIAL COURT'S FINDING THAT RESPONDENTS ARE THE EFFICIENT PROCURING CAUSE IN BRINGING ABOUT THE CONSUMMATION OF THE SALE BETWEEN THE TICONGS AND THE CHURCH THEREBY ENTITLING THEM TO THE PAYMENT OF THE OVERPRICE.[12]

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[10] *Rollo* (G.R. No. 220785), p. 58.

[11] *Rollo* (G.R. No. 222887), p. 9.

[12] *Rollo* (G.R. No. 220785), p. 23.

In its January 20, 2016 Resolution,[13] the Court denied the petition for failure to sufficiently show any reversible error in the assailed judgment to warrant the exercise by this Court of its discretionary appellate jurisdiction.

Ma. Lorena then filed her manifestation and motion for reconsideration of the January 20, 2016 Resolution which denied her petition. The said motion was granted and her petition was reinstated in the Court's Resolution[14] dated June 8, 2016.

G.R. No. 222887

Patrocinio and Wilma, on the other hand, cited the following

GROUNDS

1. **THE HONORABLE COURT OF APPEALS GRAVELY ERRED AND GRAVELY ABUSED ITS DISCRETION IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT AWARDING RESPONDENTS THE AMOUNT OF ₱2.8 MILLION AS COMMISSION/ OVERPRICE FOR THE ₱7.3 MILLION SALE OF THE 5,000 SQUARE METER LOT OF THE TICONGS TO THE MORMONS.**
2. **THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN IGNORING THE UNDISPUTED FACTS OF THE CASE AND THE CLEAR PROVISIONS OF THE MEMORANDUM OF AGREEMENT BETWEEN THE TICONGS AND THE RESPONDENTS WHICH IF CONSIDERED WOULD ALTER AND REVERSE THE ASSAILED DECISION.**[15]

On February 22, 2017, the Court ordered the consolidation of these two petitions.

Thus, the issues raised by the petitioners can be reduced to a single pivotal question — whether respondents Malim, et al.

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[13] *Id*. at 114.

[14] *Id*. at 152.

[15] *Rollo* (G.R. No. 222887), p. 9.

were entitled to the payment of their brokers' overprice commission for being the procuring cause of the sale.

Petitioner Ma. Lorena argues that the CA committed serious and reversible error when it summarily ignored the evidence presented by the Ticongs substantiating their claim that Malim, et al. were not the efficient procuring cause in the consummation of the sale. She stated that although it was admitted that the respondents were the ones who introduced and brought the parties together for negotiations, their meager efforts did not contribute to the conclusion of the transaction. She reiterates that it was Wilma who followed up with the representative of the Buyer as regards its decision in buying the properties; but the Buyer replied that it would no longer push through with the purchase of the lots because the results of the soil test and survey showed that developing the land would entail a high cost. Thus, the Ticongs were forced to file a complaint for specific performance which was eventually settled by the parties. She avers that the institution of the civil action for specific performance against the Buyer constituted a break in the continuity of the series of events which the respondents had initially set in motion.

Considering that the respondents were not the efficient procuring cause of the final sale, the petitioners insist that they were not entitled to the overprice commission mistakenly awarded by the CA, but only to the 5% Broker's Finders Fee as stipulated in the MOA. Even granting, according to Patrocinio and Wilma, that the respondents were entitled to receive the overprice commission, the amount awarded was unconscionable, considering that they were not even licensed brokers.

The respondents counter that they were the ones who caused the sale of the subject property. Documentary evidence such as the letter of intent, dated February 5, 2000, signed by Malim with the conformity of Lorenzo Ticong, addressed to Perez, the representative of Buyer; the letter of the Ticongs sent to Perez stating that their "official and registered broker is M.A.M. & Associates & Brokerage and no other authorized agents" and the acknowledgment receipt, dated March 30, 2001, showing the Ticongs' payment of ₱50,000.00 to the respondents as "partial

payment to commission," were proof that the Ticongs recognized them as the procuring cause of the sale. Lastly, the respondents underscored that they were entitled to the overprice based on the clear import of the valid MOA executed by the parties. They also claim that the petition, docketed as G.R. No. 222887, was filed without proper verification and certification of non-forum shopping.[16]

The Court's Ruling

The Court sees no cogent reason to grant the consolidated petitions.

Preliminarily, the Court cannot overemphasize the principle that in petitions for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be put into issue. Questions of fact are not cognizable by this Court.[17] Notably, the issues raised by the petitioner in this case, such as whether the respondents were the procuring cause of the sale which entitled them to the broker's overprice commission, are factual in nature as they would require this Court to delve into the records of the case and review the evidence presented by the parties in order to properly resolve the dispute.

It is also worth emphasizing that, based on the records, the petition in G.R. No. 222887 was filed out of time. Further, as noted by the respondents, the petition contained a defective Verification and Certification of Non-Forum Shopping as it was verified and notarized on February 6, 2016 or nine (9) days ahead of the petition, dated February 15, 2016. The petition, thus, failed to comply with the jurisdictional requirements under the Rules.

Nevertheless, even if the Court would gloss over these defects, the petitions must still fail.

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[16] Comments, dated June 17, 2016, *rollo* (G.R. No. 222887), pp. 91-97; Comment, dated August 1, 2016, *rollo* (G.R. No. 220785), pp. 153-160.

[17] *Philippine Health-Care Providers, Inc. (MAXICARE) v. Estrada*, 566 Phil. 603, 611 (2008).

The Court is in complete accord with the RTC and the CA in concluding that the respondents were the procuring cause of the sale. At the very least, the respondents were able to bring together the Ticongs and the Buyer to negotiate and lay the groundwork for a sale transaction.

The term "procuring cause," in describing a broker's activity, refers to a cause originating a series of events which, without break in their continuity, results in the accomplishment of the prime objective of employing the broker — to produce a purchaser ready, willing and able to buy real estate on the owner's terms.[18] To be regarded as the procuring cause of a sale, a broker's efforts must have been the foundation of the negotiations which subsequently resulted in a sale.[19] "The broker must be the efficient agent or the procuring cause of the sale. The means employed by him and his efforts must result in the sale. He must find the purchaser, and the sale must proceed from his efforts acting as broker."[20]

In this case, the role of the respondents in the successful consummation of the sale transaction is undisputed. Indeed, the evidence on record shows that the respondents were instrumental in the sale of the properties of the Ticongs. Without their intervention, no sale would have been consummated. They were the ones who set the sale of the said lots in motion. If not for the respondents, the Buyer would not have known about the lots being sold by the Ticongs. As correctly observed by the CA, the respondents were the procuring cause of the sale as shown by the following: a) on February 5, 2000, Malim, with the conformity of Lorenzo Ticong, sent a formal letter of intent informing the representative of the Buyer regarding the availability for sale of the Ticongs' properties; b) in a letter,

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[18] *Medrano v. Court of Appeals*, 492 Phil. 222, 232 (2005), citing *Clark v. Ellsworth*, 66 Ariz, 119, 184 P. 2d 821 (1947).

[19] *Oriental Petroleum and Minerals Corp. v. Tuscan Realty, Inc.*, 713 Phil. 693, 695-696 (2013).

[20] *Supra* note 18 at 232-233 (2005), citing *Danon v. Brimo*, 42 Phil. 133, 139 (1921).

dated April 15, 2000, the Ticongs expressly recognized the respondents as their sole agents and middlemen with respect to the sale transaction and that the latter were in constant communication with the Buyer and the Ticongs; c) Javier Alvero, an employee of the Ticongs, testified that the respondents were the agents who negotiated the sale of the subject lots with the Buyer; d) the Ticongs gave the respondents ₱50,000.00 as partial payment of their commission as stated in the acknowledgment receipt, dated March 30, 2001, which implied that they recognized the respondents as the procuring cause of the sale; and e) the testimony of Malim clearly proved the efforts exerted by the respondents to bring about the consummation of the sale through constant follow-ups with the Buyer by letters and telephone calls.[21]

All these circumstances led the Court to conclude that the respondents' actions indeed constituted the procuring cause of the sale. When there is a close, proximate and causal connection between the agent's efforts and the sale of the property, the agents are entitled to their commission.[22]

On the issue of whether the respondents are entitled to the overprice commission or to the 5% finders' fee only, the Court finds that the CA correctly upheld the award of ₱2.8 million as overprice commission in favor of the respondents.

The pertinent provisions of the MOA, paragraphs 3, 4 and 5, read:

> THAT, the First Party decided to sell the above lots for a net of NINE HUNDRED PESOS (₱900.00) PER SQUARE METER to the Second Party, provided, that the SECOND PARTY shall take care/ shoulder all the expenses related to the sale of the above properties, such as Capital Gains Tax, Documentary Stamps, Commissions, legal expenses and notarizations;

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[21] *Rollo* (G.R. No. 222887) pp. 24-27.

[22] *Supra* note 18 at 234, citing *Manotok Brothers, Inc. v. Court of Appeals*, G.R. No. 94753, April 7, 1993, 221 SCRA 224.

THAT, the SECOND PARTY is **authorized to make an OVERPRICE at top of the ₱900.00/sq. meter as our net asking price**; that the FIRST PARTY, hereby Authorize the SECOND PARTY to look, negotiate, and sell to any prospective buyer/buyers to the above lots;

THAT, both parties agree that this MEMORANDUM OF AGREEMENT/AUTHORITY TO SALE is good for 90 days only and may be renewed, however, even this authority LAPSE but the same registered buyer able to buy the above(any) property/properties mentioned above, the SECOND PARTY shall still be entitle for whatever OVERPRICE at top of ₱900.00/Sq.Meter; that the FIRST PARTY agrees/commit/bind themselves to observe the terms and conditions set on paragraph 3 & 4, otherwise, failure on their part to observe paragraph 3 & 4, the SECOND PARTY shall automatically be entitled for a FIVE(5) PERCENT COMMISSION as Broker's Finders Fee based on the ₱900.00/Sq.M. and that all expenses shall be shouldered by the Buyer and Seller.[23] [Emphasis supplied]

Under the said provisions, the respondents, as the Second Party, were entitled to a 5% commission if they themselves bought the property for ₱900.00 per square meter or had sold it to a third party for the exact amount of ₱900.00 per square meter. In this case, however, the respondents sold the property to a third party, the Buyer, for a higher price. The respondents were, thus, entitled to the overprice amount as commission. Given the sale of the subject lots at ₱1,460.00 per square meter, the over price was ₱560.00 per square meter or a total of ₱2,800,000.00 (₱560.00 multiplied by 5,000 square meters). From this amount, however, the amounts[24] paid by the Ticongs to the respondents should be deducted, which the RTC can determine in a summary hearing in the execution stage.

Basic is the principle that a contract (the MOA in this case) is the law between the parties, and its stipulations are binding on them, unless the contract is contrary to law, morals, good

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[23] *Rollo* (G.R. No. 222887), p. 50.

[24] The Ticongs claimed that the respondents had received not only the initial commission of ₱50,000.00 but the total amount of ₱225,000.00.

customs, public order or public policy.[25] The Ticongs, having freely and willingly entered into a contract by executing the MOA, cannot renege on their obligation to pay the overprice commission on the flimsy excuse that the respondents were not licensed brokers who did not spend much money in partially negotiating with the Buyer.

Accordingly, the Court finds no reversible error in the findings of the CA and the RTC that the Ticongs were liable to pay the overprice commission to the respondents pursuant to the MOA. The Court is bound by such factual findings in the absence of any compelling reason to reverse the same.

Anent the claim for attorney's fees, the CA properly deleted the award, there being no basis for such claim.

All awards shall earn interest of 12% per annum from April 2001 until June 30, 2013, and interest of 6% per annum from July 1, 2013 until its full satisfaction.

WHEREFORE, the consolidated petitions are **DENIED**. Accordingly, the May 27, 2015 Decision of the Court of Appeals, Cagayan de Oro City and its September 23, 2015 and January 12, 2016 Resolutions in CA-G.R. CV No. 01838-MIN, are **AFFIRMED**, without prejudice to the deduction of the amount already paid by the Ticongs.

SO ORDERED.

Carpio, Acting C. J. (Chairperson), Peralta, and *Jardeleza,*[*] *JJ.*, concur.

Leonen, J., on official leave.

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[25] *Mendiola v. Commerz Trading Int'l., Inc.*, 715 Phil. 856, 862 (2013).

[*] Designated additional member per Raffle dated December 28, 2016 vice Brion, *J.* (ret.).

SECOND DIVISION

[G.R. No. 221134. March 1, 2017]

OFFICE OF THE OMBUDSMAN-MINDANAO, *petitioner, vs.* **RICHARD T. MARTEL AND ABEL A. GUIÑARES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT PROCUREMENT; THE GOVERNMENT PROCUREMENT REFORM ACT (R.A. No. 9184), THE LOCAL GOVERNMENT CODE (R.A. No. 7160), AND COMMISSION ON AUDIT (COA) CIRCULAR NO. 92-386; ALL PROCUREMENT OF GOODS AND SERVICES FOR THE GOVERNMENT SHOULD BE DONE THROUGH COMPETITIVE BIDDING AND ONLY IN EXCEPTIONAL CIRCUMSTANCES COULD THE PROCURING ENTITY FOREGO THE STRICT REQUIREMENT OF A PUBLIC BIDDING.— Procurement of service vehicles by government is covered by R.A. No. 9184 or Government Procurement Reform Act, which took effect on January 26, 2003, and before that, by R.A. No. 7160, otherwise known as An Act Providing for a Local Government Code of 1991. COA Circular No. 92-386, which prescribes rules and regulation on Supply and Property Management in Local Government Units (*LGUs*), pursuant to Section 383 of R.A. No. 7160, also applies. Section 10 of R.A. No. 9184 provides that "[a]ll procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act." Likewise, Section 27 of COA Circular 92-386 provides that "[e]xcept as otherwise provided herein, acquisition of supplies or property by local government units shall be through competitive public bidding." Hence, there is a clear mandate by R.A. No. 9184 and COA Circular 92-386 that public bidding is the primary process to procure goods and services for the government. A competitive public bidding aims to protect public interest by giving it the best possible advantages thru open competition. It is precisely the mechanism that enables the government agency to avoid or preclude anomalies in the execution of public contracts. Strict observance of the rules,

regulations, and guidelines of the bidding process is the only safeguard to a fair, honest and competitive public bidding. Only in exceptional circumstances that R.A. No. 9184 and R.A No. 7610 allow the procuring entity to forego the strict requirement of a public bidding. Section 53 of R.A. No. 9184 provides that negotiated procurement may be availed by the procuring entity only in specific occasions, such as when there are two (2) failed biddings. Similarly, Section 369 of R.A. No. 7160 provides that negotiated purchase may be availed in case where public bidding has failed for two (2) consecutive times. Section 35 of R.A. No. 9184 provides, among others, that there is a failure to bid if no bids are received. In this case, no public bidding was conducted in the procurement of the service vehicles for the Governor and Vice-Governor. The absence of public bidding was a glaring violation of R.A. No. 9184 and R.A. No. 7160 and COA Circular No. 92-386, unless the respondents could prove that the resort to a negotiated bidding, as approved by the PBAC, was proper.

2. ID.; ID.; ID.; ID.; ID.; THE BIDS AND AWARDS COMMITTEE (BAC) IS SOLELY RESPONSIBLE FOR THE CONDUCT OF THE PROCUREMENT AND SHOULD ENSURE THAT THE PROCURING ENTITY ABIDES BY THE STANDARD SET FORTH BY THE PROCUREMENT LAW.— Under the laws, the Bids and Awards Committee shall, among others, conduct the evaluation of bids, and recommend award of contract to the head of the procuring entity. It shall ensure that the procuring entity abides by the standard set forth by the procurement law. In the LGUs, the committee on awards shall decide the winning bids on procurement. Accordingly, as members of the PBAC, the respondents were not bound by the recommendation of the PGSO to determine the mode of procurement. As an independent committee, the PBAC was solely responsible for the conduct of the procurement and could not pass the buck to others. As correctly stated by the CA, the PBAC had control over the approval of the mode of procurement and the respondents could not wash their hands from liability thereof. Their role in choosing the mode of procurement was clearly an active action, and not a passive one as the respondents would want to convey.

3. ID.; ID.; ID.; ID.; PROCUREMENT OF THE GOVERNMENT SERVICE VEHICLES DECLARED ILLEGAL FOR

VIOLATIONS OF THE PROCUREMENT LAWS AND REGULATIONS.— A scrutiny of the records would show that the respondents committed other violations of the procurement laws and regulations. The Purchase Request, with a stamp of direct purchase on its face, stated the specific brand of the vehicles to be purchased, instead of the technical specifications needed by the procuring entity, in clear violation of Section 24 of COA Circular No. 92-386. Section 18 of R.A. No. 9184 plainly provides that reference to brand names for the procurement of goods shall not be allowed. The underlying policy behind this prohibition is to prevent undue preference on certain goods or products and ensure fair and equal competition among the bidders. In spite of the glaring display of the vehicles' brand names on the purchase request, the PBAC still approved the same. The CA observed that the PBAC itself made the bidding impossible because it pre-determined the suppliers as it indicated the preferred brand of the vehicles. Another violation committed by the respondents was that they allowed the governor of Davao del Sur to purchase and use more than one vehicle, which was evidently contrary to COA Circular No. 75-6. The said provision dictates that a government official or employee is not allowed to use more than one service vehicle x x x. Notwithstanding these glaring violations of the procurement laws and the illegal approval of the vehicles' procurement by the PBAC, Martel and Guiñares actively participated in the acquisition of the same by signing the disbursement vouchers as Provincial Accountant and Provincial Treasurer, respectively. Hence, due to the acts of the respondents, the government disbursed public funds for illegally procured service vehicles.

4. **ID.; ID.; ADMINISTRATIVE CHARGES; GRAVE MISCONDUCT AND GROSS NEGLIGENCE; IN GRAVE MISCONDUCT, THE ELEMENTS OF CORRUPTION, CLEAR INTENT TO VIOLATE THE LAW, OR FLAGRANT DISREGARD OF AN ESTABLISHED RULE, MUST BE EVIDENT WHILE GROSS NEGLIGENCE IMPLIES A WANT OR ABSENCE OF, OR FAILURE TO EXERCISE SLIGHT CARE OR DILIGENCE, OR THE ENTIRE ABSENCE OF CARE.—** Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross neglect of duty by a public officer. The misconduct is considered to be grave if it also involves other elements such

as corruption or the willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple. In grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule, must be evident. On the other hand, "gross negligence implies a want or absence of, or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them."

5. ID.; ID.; ID.; ID.; MITIGATING CIRCUMSTANCES; LACK OF PROOF OF OVERPRICING OR DAMAGE TO THE GOVERNMENT DOES NOT *IPSO FACTO* AMOUNT TO A MITIGATED PENALTY WHILE LENGTH OF SERVICE CAN EITHER BE A MITIGATING OR AGGRAVATING CIRCUMSTANCE DEPENDING ON THE FACTUAL MILIEU OF EACH CASE; LENGTH OF SERVICE CANNOT BE CONSIDERED AS A MITIGATING CIRCUMSTANCE IN FAVOR OF THE RESPONDENTS DUE TO THE SERIOUSNESS OF THEIR TRANSGRESSIONS.— [T]he element of misappropriation is not indispensable in an administrative charge of grave misconduct. Thus, the lack of proof of overpricing or damage to the government does not *ipso facto* amount to a mitigated penalty. [L]ength of service is not a magic phrase that, once invoked, will automatically be considered as a mitigating circumstance in favor of the party invoking it. Length of service can either be a mitigating or aggravating circumstance depending on the factual milieu of each case. Length of service, in other words, is an alternative circumstance. Here, Martel and Guiñares had been the Provincial Accountant and the Provincial Treasurer, respectively, and both were members of the PBAC for a number of years. With their extensive experience, it was expected that they were knowledgeable with the various laws on the procurement process. Thus, it is truly appalling that the respondents failed to apply the basic rule that all procurement shall be done through competitive bidding and that only in exceptional circumstances could public bidding be dispensed with. [T]hey also committed several violations during the course of the procurement which underscored the seriousness of their transgressions.

6. ID.; ID.; ID.; ID.; PROPER PENALTY. — [A]s to the argument that the respondents should have the same penalty imposed on Putong, the same fails to persuade. As properly explained by

the Ombudsman, there was a substantial distinction between the participation of Putong and that of the respondents. It found that Putong, after being relieved from his position as PGSO in 2004 per Memorandum Order No. 221-2004, no longer had any participation in the preparation of the purchase orders, inspection and payment of the vehicles. Thus, due to the limited participation of Putong, the Ombudsman reduced his penalty from dismissal to one (1) year suspension without pay. In the case of Martel and Guiñares, the Ombudsman imposed the penalty of dismissal because of their full participation in the questionable procurement and the disbursement of funds. It was duly established that the disbursement vouchers for the five (5) vehicles were signed by Martel and Guiñares as Provincial Accountant and Provincial Treasurer, respectively. The continuous and active participation of the respondents led to the acquisition of the illegally procured goods. Because of their indispensable role in the transactions, the taxpayer's hard-earned money were illegally disbursed. Thus, the Court finds that the respondents do not deserve a mitigated penalty.

7. ID.; ID.; ID.;ID.; WHEN AN OFFICER OR EMPLOYEE IS DISCIPLINED, THE OBJECT SOUGHT IS NOT THE PUNISHMENT OF SUCH OFFICER OR EMPLOYEE, BUT THE IMPROVEMENT OF PUBLIC SERVICE AND THE PRESERVATION OF THE PUBLIC'S FAITH AND CONFIDENCE IN THE GOVERNMENT.— [I]t must be stressed that serious offenses, such as grave misconduct and gross neglect of duty, have always been and should remain anathema in the civil service. They inevitably reflect on the fitness of a civil servant to continue in office. When an officer or employee is disciplined, the object sought is not the punishment of such officer or employee, but the improvement of public service and the preservation of the public's faith and confidence in the government. Indeed, public office is a public trust.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Europa Dacanay Cubelo Europa & Flores for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the February 4, 2015 Decision[1] and the October 16, 2015 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 05473-MIN, which reduced the administrative penalty imposed upon respondents Richard T. Martel (*Martel*) and Abel A. Guiñares (*Guiñares*) by the Office of the Ombudsman-Mindanao (*Ombudsman*) in its February 25, 2011 Decision and February 28, 2013 Order in Case No. OMB-M-A-05-450-L.

The Antecedents

In 2003, Martel was the Provincial Accountant of Davao del Sur while Guiñares was its Provincial Treasurer. They both served as *ex officio* members of the Provincial Bids and Awards Committee (*PBAC*) of Davao del Sur, together with Victoria Givero Mier (*Mier*), Provincial Budget Officer; Edgar Cajiling Gan (*Gan*), Provincial Board Member; and Allan Putong (*Putong*), Provincial General Services Officer (*PGSO*).

In the Purchase Requests, dated January 24, 2003, February 18, 2003 and July 15, 2003, the Office of the Governor of Davao del Sur requested the acquisition of five service vehicles, namely: two (2) Toyota Hilux 4x4 SR5, one (1) Mitsubishi L300 Exceed DX, and two (2) Ford Ranger XLT 4x4 M/T, for the use of the Governor and the Vice-Governor.

The procurement of the five (5) vehicles was not subjected to a public bidding as it was immediately effected through direct purchase pursuant to the recommendation of Putong as PGSO. The recommendation was approved by the members of the PBAC, which included Martel and Guiñares. Accordingly, the said

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[1] Penned by Associate Justice Pablito A. Perez with Associate Justice Edgardo A. Camello and Associate Justice Henri Jean Paul B. Inting, concurring; *rollo*, pp. 33-49.

[2] *Id.* at 56-58.

vehicles were purchased and delivered to the provincial government. The disbursement vouchers for the five (5) vehicles were signed by Martel and Guiñares as Provincial Accountant and Provincial Treasurer, respectively.[3]

Subsequently, a concerned citizen wrote to the Ombudsman, reporting the lack of public bidding of the said procurement. Acting thereon, the Ombudsman launched an investigation concerning the acquisition of the said vehicles.

The Ombudsman's Ruling

In its Decision, dated June 14, 2012, the Ombudsman found Martel, Guiñares, Putong, and Mier guilty of grave misconduct and gross neglect of duty. The Ombudsman opined that these PBAC officers improperly resorted to direct purchase, completely disregarding the required public bidding. Gan, however, was relieved of his administrative liability due to his re-election as provincial board member. The decretal portion reads:

> WITH THE FOREGOING PREMISES, this Office finds substantial evidence to sanction respondents Richard Tan Martel, Allan Cudera Putong, Victoria Givero Mier and Abel Arquillano Guiñares for Grave Misconduct and Gross Neglect of Duty. Pursuant to Administrative Order No. 17, this Office hereby orders said respondents DISMISSED from service together with all its accessory penalties. The incumbent Honorable Governor of the Province of Davao del Sur is hereby directed to implement this Office's Decision and to submit a compliance report within ten (10) days from the implementation thereof. As for respondent Edgar Cajilig Gan, the case is hereby rendered DISMISSED pursuant to the Doctrine of Condonation as declared in the case of Aguinaldo vs. Santos 212 SCRA 768.[4]

Martel, Guiñares, Mier, and Putong moved for reconsideration, arguing that they had no intent to commit any irregularity as they only approved the recommendation of the PGSO to directly purchase the vehicles. On the other hand, Putong asserted that he merely adopted the previous practice in his office where

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[3] *Id.* at 16.

[4] *Id.* at 35.

the vehicles would be purchased from the car dealers because no one participates in a public bidding of vehicles. He also added that he was removed as PGSO in 2004 and was not a party to the whole process of the procurement of the vehicles.

In its Order,[5] dated February 28, 2013, the Ombudsman partially granted the motion for reconsideration of Putong. Because Putong had been relieved from his position as PGSO in 2004 pursuant to Memorandum Order No. 221-2004, he had limited participation in the anomalous procurement of the vehicles. Thus, the Ombudsman lowered his penalty of dismissal to one (1) year suspension without pay. It, however, sustained the penalty of dismissal against Martel, Guiñares and Mier due to their full participation in the purchase and acquisition of the service vehicles. The *fallo* reads:

> WITH THE FOREGOING PREMISES the subject Motions of RICHARD TAN MARTEL and ABEL ARQUILLANO GUIÑARES are hereby DENIED. The Decision 25 February 2011 stands in so far as respondents RICHARD TAN MARTEL, ABEL ARQUILLANO GUIÑARES and VICTORIA GIVERO MIER, are concerned. As for respondent Putong, the subject Motion for Reconsideration is granted. Accordingly, the Provincial Governor of Davao Del Sur is hereby directed to implement the penalty of DISMISSAL from service with all its accessory penalties for respondents Martel, Guiñares and Mier, and to submit to this Office his compliance report, within five (5) days from receipt hereof. With regard to respondent Putong, he is hereby suspended for a period of one (1) year without pay. The Provincial Governor is also directed to implement the suspension of respondent Putong and is likewise, directed to submit a compliance report, within five days from receipt hereof.
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> SO ORDERED.[6]

Undaunted, Martel and Guiñares appealed before the CA under Rule 43 of the Rules of Court.

The CA Ruling

In its assailed decision, dated February 4, 2015, the CA found that the PBAC members committed a violation when they resorted

[5] *Id.* at 62-70.

[6] *Id.* at 69.

to a negotiated purchase even without a prior public bidding. Under Republic Act (*R.A.*) No. 9184 and R.A. No. 7160, negotiated procurement can only be resorted to when there are two (2) failed biddings. The CA ruled that there was no failure of bidding because no public bidding was ever conducted. It also observed that the PBAC violated (1) Section 18 of R.A. No. 9184 prohibiting the reference of brand names for the purpose of procurement; and (2) COA Circular No. 75-6 precluding government officials or employees from using more than one motor vehicle.

Further, the CA did not give credence to the excuse of Martel and Guiñares that they merely followed the recommendation of Putong as PGSO. The appellate court emphasized that under R.A. No. 9184, the PBAC had the final and independent authority to determine the mode of procurement.

The CA, however, lowered the penalty imposed on Martel and Guiñares from dismissal to one (1) year suspension without pay. The appellate court opined that the penalty should be lowered because aside from the fact that there was no proof of overpricing or damage to the government, the length of service of Martel and Guiñares warranted a mitigated penalty. It explained that the penalty imposed upon them must be the same as that imposed on Putong, who was also a member of the PBAC which approved the mode of procurement; and that a graver penalty would violate their right to equal protection. The CA disposed the appeal in this wise:

> WHEREFORE, foregoing premises considered, the 25 February 2011 Decision of the Office of the Ombudsman is AFFIRMED with MODIFICATION. The penalty of dismissal meted upon petitioners RICHARD T. MARTEL and ABEL A. GUIÑARES is hereby lowered to ONE YEAR SUSPENSION WITHOUT PAY.
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> SO ORDERED.[7]

The Ombudsman moved for reconsideration, but its motion was denied by the CA in its Resolution, dated October 16, 2015.

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[7] *Id.* at 48.

Hence, this petition.

ISSUE

THE COURT OF APPEALS COMMITTED AN ERROR IN THE INTERPRETATION OF LAW WHEN IT AUTOMATICALLY CONSIDERED LENGTH OF SERVICE AS A MITIGATING CIRCUMSTANCE IN FAVOR OF RESPONDENTS.[8]

The Ombudsman, through the Office of the Solicitor General (*OSG*), argues that the CA should not have decreased the administrative penalty of the respondents because of their length of service as "(l)ength of service can either be a mitigating or aggravating circumstance depending on the factual milieu of each case." In this case, the OSG argues that the respondents' length of service should have taught them "that integrity once destroyed will remain as such," and should have made them dutiful in the performance of their function. Because of their length of service, they should have known that the lack of public bidding was a gross and blatant violation of R.A. No. 9184, which constituted grave misconduct and gross neglect of duty, and that they should not have allowed themselves to be manipulated or dictated in reference to their duties as such illegal acts of bypassing the procurement laws would cater to the whims of their political *padrinos*.[9]

In addition, the Ombudsman asserts that the mitigation of the respondents' penalty from dismissal from service to mere one (1) year suspension is unwarranted; that Putong's penalty was mitigated because of his limited participation, unlike the respondents who actively participated in the entire procurement process; and that Martel and Guiñares knew of the illegal practice of foregoing public bidding but they still signed the five (5) disbursement vouchers for the vehicles, as Provincial Accountant and Provincial Treasurer, respectively.

In their Comment,[10] the respondents countered that the motion for reconsideration filed by the petitioners before the CA was

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[8] *Id.* at 17-18.

[9] *Id.* at 19-21.

[10] *Id.* at 78-85.

improperly served on them rendering it a mere scrap of paper, and so, it could not have tolled the running of the period to appeal and allowed the judgment to attain finality; that the CA had the power to lower the penalty against them considering that there was no bad faith on their part; and that the penalty imposed on them should be the same penalty imposed on Putong because the latter was also a member of the PBAC.

The Court's Ruling

The Court finds the petition meritorious.

The procurement of the vehicles violated R.A No. 9184 and R.A No. 7160 and COA Circular No. 92-386

At the onset, the applicable laws in the present case must be determined. Procurement of service vehicles by government is covered by R.A. No. 9184 or Government Procurement Reform Act, which took effect on January 26, 2003, and before that, by R.A. No. 7160, otherwise known as An Act Providing for a Local Government Code of 1991. COA Circular No. 92-386, which prescribes rules and regulation on Supply and Property Management in Local Government Units (*LGUs*), pursuant to Section 383 of R.A. No. 7160, also applies.

Section 10 of R.A. No. 9184 provides that "[a]ll procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act." Likewise, Section 27 of COA Circular 92-386 provides that "[e]xcept as otherwise provided herein, acquisition of supplies or property by local government units shall be through competitive public bidding." Hence, there is a clear mandate by R.A. No. 9184 and COA Circular 92-386 that public bidding is the primary process to procure goods and services for the government.

A competitive public bidding aims to protect public interest by giving it the best possible advantages thru open competition. It is precisely the mechanism that enables the government agency to avoid or preclude anomalies in the execution of public

contracts.[11] Strict observance of the rules, regulations, and guidelines of the bidding process is the only safeguard to a fair, honest and competitive public bidding.[12]

Only in exceptional circumstances that R.A. No. 9184 and R.A No 7610 allow the procuring entity to forego the strict requirement of a public bidding. Section 53 of R.A. No. 9184 provides that negotiated procurement may be availed by the procuring entity only in specific occasions, such as when there are two (2) failed biddings. Similarly, Section 369 of R.A. No. 7160 provides that negotiated purchase may be availed in case where public bidding has failed for two (2) consecutive times. Section 35 of R.A. No. 9184 provides, among others, that there is a failure to bid if no bids are received.

In this case, no public bidding was conducted in the procurement of the service vehicles for the Governor and Vice-Governor. The absence of public bidding was a glaring violation of R.A. No. 9184 and R.A. No. 7160 and COA Circular No. 92-386, unless the respondents could prove that the resort to a negotiated bidding, as approved by the PBAC, was proper.

The CA and the Ombudsman similarly found that the PBAC utterly failed to justify the negotiated procurement. There was no failure to bid because there was no invitation to bid and no bids could have ever been received.

The respondents, however, reasoned out that it was upon the recommendation of the PGSO that they resorted to the direct purchase of the vehicles and the PBAC merely approved the recommendation of the PGSO.

The argument utterly lacks merit.

Under the laws, the Bids and Awards Committee shall, among others, conduct the evaluation of bids, and recommend award of contract to the head of the procuring entity.[13] It shall ensure

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[11] *Rivera v. People*, G.R. Nos. 156577, 156587 & 156749, December 3, 2014, 743 SCRA 477, 500-501.

[12] *Republic v. Capulong*, 276 Phil. 136, 152 (1991).

[13] Section 12, R.A. No. 9184.

that the procuring entity abides by the standard set forth by the procurement law. In the LGUs, the committee on awards shall decide the winning bids on procurement.[14]

Accordingly, as members of the PBAC, the respondents were not bound by the recommendation of the PGSO to determine the mode of procurement. As an independent committee, the PBAC was solely responsible for the conduct of the procurement and could not pass the buck to others. As correctly stated by the CA, the PBAC had control over the approval of the mode of procurement and the respondents could not wash their hands from liability thereof. Their role in choosing the mode of procurement was clearly an active action, and not a passive one as the respondents would want to convey.[15]

A scrutiny of the records would show that the respondents committed other violations of the procurement laws and regulations. The Purchase Request,[16] with a stamp of direct purchase on its face, stated the specific brand of the vehicles to be purchased, instead of the technical specifications needed by the procuring entity, in clear violation of Section 24 of COA Circular No. 92-386. Section 18[17] of R.A. No. 9184 plainly provides that reference to brand names for the procurement of goods shall not be allowed. The underlying policy behind this prohibition is to prevent undue preference on certain goods or products and ensure fair and equal competition among the bidders. In spite of the glaring display of the vehicles' brand names on the purchase request, the PBAC still approved the same. The CA observed that the PBAC itself made the bidding impossible because it pre-determined the suppliers as it indicated the preferred brand of the vehicles.

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[14] Section 364, R.A. No. 7160.

[15] *Rollo*, pp. 43-45.

[16] CA *rollo*, p. 34.

[17] R.A. No. 9184, Sec. 18. Reference to Brand Names. — Specifications for the Procurement of Goods shall be based on relevant characteristics and/or performance requirements. Reference to brand names shall not be allowed.

Another violation committed by the respondents was that they allowed the governor of Davao del Sur to purchase and use more than one vehicle, which was evidently contrary to COA Circular No. 75-6. The said provision dictates that a government official or employee is not allowed to use more than one service vehicle, to wit:

> III. Officials entitled to use of more than one motor vehicle — With the exception of the President, no government official and employee authorized to use any vehicle operated and maintained from the funds appropriated in the decree shall be allowed to use more than one such motor vehicle; PROVIDED, HOWEVER that the Chief Justice of the Supreme Court may be allowed to use two motor vehicles.

Notwithstanding these glaring violations of the procurement laws and the illegal approval of the vehicles' procurement by the PBAC, Martel and Guiñares actively participated in the acquisition of the same by signing the disbursement vouchers as Provincial Accountant and Provincial Treasurer, respectively. Hence, due to the acts of the respondents, the government disbursed public funds for illegally procured service vehicles.

The Respondents committed Grave Misconduct and Gross Neglect of Duty

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross neglect of duty by a public officer.[18] The misconduct is considered to be grave if it also involves other elements such as corruption or the willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple. In grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule, must be evident.[19]

On the other hand, "gross negligence implies a want or absence of, or failure to exercise slight care or diligence, or the entire

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[18] *Bureau of Internal Revenue v. Organo*, 468 Phil. 111, 118 (2004).

[19] *Chavez v. Garcia*, G.R. No. 195054, April 4, 2016.

absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them."[20]

In *Lagoc v. Malaga*,[21] where the members of the BAC did not conduct a public bidding because the invitation to bid was not published and they favored a specific contractor, the Court held that their actions constituted grave misconduct when they conducted the procurement process without a public bidding. The Court emphasized that it was the duty of the BAC to ensure that the rules and regulations for the conduct of bidding for government projects were faithfully observed.

In this case, respondents Martel and Guiñares, as members of the PBAC, being the Provincial Treasurer and the Provincial Auditor, respectively, committed the following transgressions:

1. They failed to conduct a public or competitive bidding as a mode of procurement.
2. Without any basis in law, they allowed the resort to negotiated procurement in violation of Sections 35, 48, 50 and 53 of R.A. No. 9184; Sections 356, 366 and 369 of R.A. No. 7160; and COA Circular No. 92-386.
3. In the direct purchase of the vehicles, they specified the brand name of the units they wanted to procure, instead of technical descriptions only, which violated Section 18 of R.A. No. 9184.
4. They approved the purchase of more than one service vehicle for the use of the governor, in violation of COA Circular No. 75-6.
5. They signed and issued the disbursement vouchers for the vehicles despite their illegal procurement.

Length of service does not justify mitigation of penalty;

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[20] *Office of the Ombudsman v. Manalastas*, G.R. No. 208264, July 27, 2016.

[21] G.R. No. 184785, G.R. No. 184890, July 9, 2014, 729 SCRA 421.

Putong had a limited participation

Even though it affirmed the administrative guilt of the respondents for grave misconduct and gross neglect of duty, warranting the penalty of dismissal from service, the CA downgraded their penalty to one (1) year suspension without pay. The appellate court explained that aside from the fact that there was no proof of overpricing or damage to the government, the length of government service of the respondents should mitigate their penalty. Martel was appointed Provincial Accountant in 1992; while Guiñares was appointed Provincial Treasurer in 2001. The CA also stated that justice and fairness dictated that the respondents should suffer the same penalty meted out to Putong, who was also a member of the PBAC.

The Court disagrees.

First, the element of misappropriation is not indispensable in an administrative charge of grave misconduct.[22] Thus, the lack of proof of overpricing or damage to the government does not *ipso facto* amount to a mitigated penalty.

Second, length of service is not a magic phrase that, once invoked, will automatically be considered as a mitigating circumstance in favor of the party invoking it. Length of service can either be a mitigating or aggravating circumstance depending on the factual milieu of each case. Length of service, in other words, is an alternative circumstance.[23]

In *University of the Philippines v. Civil Service Commission*,[24] the length of service of the respondent therein was not considered; instead, the Court took it against the said respondent because her length of service, among other things, helped her in the

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[22] *Office of the Ombudsman v. Agustino*, G.R. No. 204171, April 15, 2015, 755 SCRA 568, 585.

[23] *Civil Service Commission v. Cortez*, 474 Phil. 670, 685-686 (2004).

[24] 284 Phil. 296 (1992), citing Section 52 (A) (3), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service.

commission of the offense. In *Bondoc v. Mantala*,[25] it was asserted that jurisprudence was replete with cases declaring that a grave offense could not be mitigated by the fact that the accused was a first-time offender or by the length of service of the accused. While in most cases, length of service was considered in favor of the respondent, it was not considered where the offense committed was found to be serious or grave.

Here, Martel and Guiñares had been the Provincial Accountant and the Provincial Treasurer, respectively, and both were members of the PBAC for a number of years. With their extensive experience, it was expected that they were knowledgeable with the various laws on the procurement process. Thus, it is truly appalling that the respondents failed to apply the basic rule that all procurement shall be done through competitive bidding and that only in exceptional circumstances could public bidding be dispensed with. As previously discussed, they also committed several violations during the course of the procurement which underscored the seriousness of their transgressions.

Third, as to the argument that the respondents should have the same penalty imposed on Putong, the same fails to persuade. As properly explained by the Ombudsman, there was a substantial distinction between the participation of Putong and that of the respondents. It found that Putong, after being relieved from his position as PGSO in 2004 per Memorandum Order No. 221-2004, no longer had any participation in the preparation of the purchase orders, inspection and payment of the vehicles. Thus, due to the limited participation of Putong, the Ombudsman reduced his penalty from dismissal to one (1) year suspension without pay.

In the case of Martel and Guiñares, the Ombudsman imposed the penalty of dismissal because of their full participation in the questionable procurement and the disbursement of funds. It was duly established that the disbursement vouchers for the five (5) vehicles were signed by Martel and Guiñares as Provincial Accountant and Provincial Treasurer, respectively. The

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[25] G.R. No. 203080, November 12, 2014, 740 SCRA 311.

continuous and active participation of the respondents led to the acquisition of the illegally procured goods. Because of their indispensable role in the transactions, the taxpayer's hard-earned money were illegally disbursed. Thus, the Court finds that the respondents do not deserve a mitigated penalty.

On a final note, it must be stressed that serious offenses, such as grave misconduct and gross neglect of duty, have always been and should remain anathema in the civil service. They inevitably reflect on the fitness of a civil servant to continue in office. When an officer or employee is disciplined, the object sought is not the punishment of such officer or employee, but the improvement of public service and the preservation of the public's faith and confidence in the government.[26] Indeed, public office is a public trust.

WHEREFORE, the petition is **GRANTED**. The February 4, 2015 Decision and the October 16, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 05473-MIN are **REVERSED** and **SET ASIDE**. The February 28, 2013 Order of the Ombudsman in OMB-M-A-05-450-L, is hereby **REINSTATED**.

SO ORDERED.

Carpio, Acting C.J. (Chairperson), *Velasco, Jr.*,[*] and *Peralta, JJ.*, concur.

Leonen, J., on official leave.

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[26] *Medina v. Commission on Audit*, 567 Phil. 649, 665 (2008).

[*] Per Special Order No. 2416-U dated January 4, 2017.

SECOND DIVISION

[G.R. No. 225644. March 1, 2017]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDWIN TUARDON *y* ROSALIA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; WHEN THE ACCUSED ADMITS KILLING THE VICTIM AND INVOKES SELF-DEFENSE AS A JUSTIFYING CIRCUMSTANCE, IT IS INCUMBENT UPON HIM TO PROVE THE SAID CIRCUMSTANCE BY CLEAR AND CONVINCING EVIDENCE.—** In criminal cases, the burden of proof generally lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt rather than upon the accused that he was in fact innocent. It is a time-honored rule, however, that when the accused admits killing the victim and invokes self-defense as a justifying circumstance, it is incumbent upon him to prove the said circumstance by clear and convincing evidence. Thus, the accused must rely on the strength of his evidence and not on the weakness of that of the prosecution, for even if the latter is weak, it could not be questioned that the accused has admitted the killing.

2. **ID.; ID.; ID.; ID.; ELEMENTS; NOT PROVED.—** To successfully claim self-defense, the accused must satisfactorily prove the concurrence of all of its elements. Under Article 11 of the Revised Penal Code (*RPC*), any person who acts in defense of his person or rights does not incur any criminal liability provided that the following circumstances concur: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself. The most important of the three is the element of unlawful aggression because without it, there could be no self-defense, whether complete or incomplete. As can be gleaned from the records, Tuardon failed to discharge this burden. The Court concurs with the trial court's assessment that Tuardon's claim of self-defense could not be given any credence.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE FINDINGS OF THE TRIAL COURT ON THE CREDIBILITY OF WITNESSES DESERVE A HIGH DEGREE OF RESPECT AND WILL NOT BE DISTURBED ON APPEAL IN THE ABSENCE OF ANY CLEAR SHOWING THAT THE TRIAL COURT OVERLOOKED, MISUNDERSTOOD OR MISAPPLIED SOME FACTS OR CIRCUMSTANCES OF WEIGHT AND SUBSTANCE WHICH COULD HAVE ALTERED THE CONVICTION OF THE APPELLANT.— The Court has no reason to doubt Flores' testimony and positive declaration. Jurisprudence dictates that the findings of the trial court on the credibility of witnesses deserve a high degree of respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could have altered the conviction of the appellant. This is especially true in this case considering that the testimony of Flores was corroborated by the medical findings. Thus, the Court finds no reason to deviate from this rule.

4. CRIMINAL LAW; REVISED PENAL CODE; QUALIFYING CIRCUMSTANCES; TREACHERY; ESSENCE.— "There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." The essence of treachery is the sudden and unexpected attack by the aggressor on the unsuspecting victim, depriving the latter of any real chance to defend himself, thus ensuring its commission without risk to the aggressor and without the slightest provocation on the part of the victim.

5. ID.; ID.; MURDER; COMMITTED; PROPER PENALTY.— In view of the presence of the qualifying circumstance of treachery, the crime committed by Tuardon is murder under Article 248 of the RPC, which is punishable by *reclusion temporal*, in its maximum period, to death. There being no other aggravating or mitigating circumstances, the RTC and the CA were correct in imposing the penalty of *reclusion perpetua*.

6. ID.; ID.; FRUSTRATED HOMICIDE; COMMITTED; MERE SUDDENNESS AND UNEXPECTEDNESS OF THE

ASSAULT DOES NOT AMOUNT TO TREACHERY, FOR TO APPRECIATE TREACHERY THE ATTACK MUST BE DELIBERATE AND WITHOUT WARNING AND THE MEANS ADOPTED TO CARRY IT MUST HAVE BEEN PURPOSELY SOUGHT TO ENSURE THE SUCCESS OF THE SINISTER DEED.— The Court, however, finds merit in Tuardon's contention that he could not be convicted of frustrated murder in the shooting of Flores. Both the RTC and the CA classified Tuardon's sudden attack on Flores as frustrated murder because the latter was unarmed, unprepared, and defenseless. The fact, however, that the victim was unarmed at the time of the attack does not make the same treacherous. In the same vein, the mere suddenness and unexpectedness of the assault does not amount to treachery. [T]he attack must be deliberate and without warning and the means adopted to carry it must have been purposely sought to ensure the success of the sinister deed. In this case, evidence for both the defense and the prosecution would show that the shooting of Flores, as well as the means to carry it, was neither unexpected nor consciously adopted by Tuardon. x x x The testimonies of Flores and Tuardon disclose that the latter's mode of attack on the former could not have been consciously adopted. Indeed, while the attack was sudden, it was evidently done on impulse — Tuardon shot Flores only because the latter was rushing towards him. The shooting was evidently not deliberate as Flores was not at the scene earlier. Considering that no treachery or any other qualifying aggravating circumstance attended the shooting of Flores, Tuardon can only be convicted of the crime of frustrated homicide under Article 249, in relation to Article 50 of the RPC.

7. ID.; ID.; ID.; PROPER PENALTY.— As to the penalty to be imposed, the Court, in *Ibanez v. People*, explained in this wise: Article 249 of the Revised Penal Code provides that the imposable penalty for homicide is reclusion temporal. Article 50 of the same Code states that the imposable penalty upon principals of a frustrated crime shall be the penalty next lower in degree than that prescribed by law for the consummated felony. Hence, frustrated homicide is punishable by prision mayor. Applying the Indeterminate Sentence Law, there being no aggravating or mitigating circumstances present in this case, the minimum penalty to be meted on the petitioners should be anywhere within

the range of six (6) months and one (1) day to six (6) years of *prision correccional* and the maximum penalty should be taken from the medium period of *prision mayor* ranging from eight (8) years and one (1) day to ten (10) years. x x x.

8. ID.; ID.; MURDER AND FRUSTRATED HOMICIDE; CIVIL LIABILITY OF ACCUSED-APPELLANT.— Jurisprudence is settled that when death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages. In *People v. De Jesus*, the Court held that the award of ₱25,000.00 as temperate damages in homicide or murder cases was proper when the actual expenses incurred due to the death of the victim were not satisfactorily proven. In *People v. Jugueta*, the Court summarized the amounts of damages which may be awarded for different crimes. In the said case, the Court held that for the crime of murder, where the penalty imposed is *reclusion perpetua*, the following amounts may be awarded: (1) ₱75,000.00, as civil indemnity; (2) ₱75,000.00, as moral damages; and (3) ₱75,000.00, as exemplary damages. On the other hand, for the crime of frustrated homicide, the following amounts may be awarded: (1) ₱30,000.00, as civil indemnity; and (2) ₱30,000.00, as moral damages. All monetary awards shall earn interest at the rate of six (6) percent per annum reckoned from the finality of this decision until fully paid.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

MENDOZA, *J.*:

This is an appeal from the October 29, 2015 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR HC No. 00053, which

[1] Penned by Associate Justice Marie Christine Azcarraga-Jacob, with Associate Justice Gabriel T. Ingles and Associate Justice Marilyn B. Lagura-Yap, concurring; *rollo*, pp. 6-19.

affirmed with modification, the March 30, 2004 Decision[2] of the Regional Trial Court, Branch 61, Kabankalan City, Negros Occidental (*RTC*), finding accused-appellant Edwin Tuardon *y* Rosalia (*Tuardon*) guilty beyond reasonable doubt of the crime of Murder in Criminal Case No. 99-2257 and of Frustrated Murder in Criminal Case No. 99-2258.

The Antecedents

On May 28, 1999, Tuardon and his co-accused Ronnel Dima-ala *y* Dimapiles (*Dima-ala*) were charged before the RTC with murder committed against PO1 Jerry Dagunan (*Dagunan*) and frustrated murder committed against Edwin T. Flores (*Flores*). The Informations read:

Criminal Case No. 99-2257

That on or about the 17th day of January, 1999, in the City of Kabankalan, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a .45 caliber pistol, with evident premeditation and treachery, conspiring, confederating and helping each other and with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and shoot one PO1 JERRY DAGUNAN, thereby inflicting injuries upon the body of the latter which caused his death.

CONTRARY TO LAW.[3]

Criminal Case No. 99-2258

That on or about the 17th day of January, 1999, in the City of Kabankalan, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a .45 caliber pistol, with evident premeditation and treachery, conspiring, confederating and helping each other and with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and shoot one EDWIN FLORES y TORTOCION, thereby inflicting injuries upon the body of the latter which would have caused his death; thus, the accused performed all the acts of execution which would have produced the crime of murder as a consequence but, nevertheless,

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[2] Penned by Presiding Judge Henry D. Aries; CA *rollo*, pp. 134-153.

[3] Records, p. 1.

did not produce it by reason of some causes independent of the will of the accused, that is, the timely and able medical assistance rendered to said Edwin Flores y Tortocion which prevented his death.

CONTRARY TO LAW.[4]

On February 21, 2000, Tuardon and Dima-ala were arraigned and both pleaded "not guilty" to the charges. Thereafter, the trial ensued.

Evidence for the Prosecution

The prosecution presented Flores, Eddie Medel (*Medel*), SPO2 Rafael Gemoto II (*SPO2 Gemoto*), PO3 Vicente Gemoto, P/Inspector Ramonit A. Javier, Jocelia Dagunan, Dr. Isagani Ayala (*Dr. Ayala*), and Dr. Ruel Trecho (*Dr. Trecho*), as its witnesses.[5] Their combined testimonies tended to establish the following:

On January 17, 1999, at around 8:00 o'clock in the evening, during the celebration of the Sinulog Festival of Kabankalan City, Negros Occidental, victims Flores and Dagunan, a police officer of Kabankalan City, were in Medel's kiosk situated at the middle of Kabankalan City Public Plaza. While Flores and Dagunan were drinking and eating, Teody Roca (*Teody*), Arman Roca (*Arman*), Dima-ala, and Tuardon, a rebel-returnee, arrived at the kiosk. A few moments later, an altercation ensued between Dagunan and Teody with the former drawing his gun and the latter, pulling out a knife. The confrontation was interrupted after Medel pacified them. Thereafter, Teody, Arman, Dima-ala, and Tuardon immediately left the place, while Flores and Dagunan stayed. After a while, Flores left to urinate. While urinating at a wall, Flores saw Dima-ala handing a black pistol to Tuardon. He went back to the kiosk where he saw Dagunan still eating.[6]

At about 9:30 o'clock in the evening, Dagunan asked Flores to accompany him to the comfort room in the public plaza.

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[4] *Id.* at 245.

[5] CA *rollo*, p. 136.

[6] *Id.* at 135-136.

While Flores was following Dagunan to the comfort room, Tuardon suddenly rushed in between them. When Dagunan was standing at the main door of the comfort room and in the act of urinating, he was shot by Tuardon, who was situated at the right side and immediately behind the former. Dagunan was hit at the base of his head causing him to fall to the ground. Upon witnessing what transpired, Flores said "Oh." Tuardon, upon noticing Flores, shot him in the chest, which caused him to fall to the ground. Then, Tuardon hurriedly left the place.

Not long thereafter, Tuardon was arrested by SPO2 Gemoto. Both victims were brought to the Gumersindo Garcia Memorial Hospital in Kabankalan City where Dagunan was pronounced dead. Flores, meanwhile, was transferred to Bacolod Provincial Hospital where he was confined and treated.[7]

Dr. Ayala, in a medico-legal report with the sketch attached thereto, revealed that Dagunan was shot at the base of his head through and through causing brain tissue damage, the point of entry being his left-back side, and the point of exit being the right side. Dr. Trecho, on the other hand, issued a medical certificate stating that Flores sustained a gunshot wound with 1 cm. 2nd intercostal space 2.I.C.S. AAL through and through level of T6 left area scapular line.[8]

Evidence for the Defense

The defense presented Tuardon himself, his cousin Raul Rosalia (*Rosalia*), and Teody, as its witnesses. It claimed that Tuardon acted in self-defense. Thus:

On January 17, 1999, at about 5:30 o'clock in the afternoon, Tuardon and his son were at the Kabankalan Public Plaza watching the highlight of the Sinulog Festival. From time to time, Tuardon would join Teody and his companions, including Dima-ala and one Benjie Javier (*Javier*) in their drinking session at the kiosk of Bikek Gargaritano. At around 7:00 o'clock in

[7] *Id.* at 136.

[8] *Id.* at 140.

the evening, he noticed a commotion at the kiosk of Medel. At a distance of about twelve (12) to fifteen (15) meters, he saw Teody being held by Dagunan and noticed that Javier was able to pacify them. Thereafter, he did not mind them anymore.[9]

Later, Tuardon again joined the group to drink but shortly excused himself to look for his son. While looking for his son, he encountered Rosalia who invited him to go home with him. As they were walking towards the terminal at past 9:00 o'clock in the evening, they passed by a comfort room. Tuardon excused himself to use the comfort room and told Rosalia to just wait for him outside. As he was turning around after urinating, he hit one of the legs of Dagunan, who had just entered the comfort room. They stared at each other and Dagunan asked him if he knew Teody to which he answered "no." Dagunan got angry with his reply and called him stupid. Tuardon got angry and told Dagunan that he was the stupid one. At this juncture, Dagunan drew his gun on his right side, but Tuardon was able to stop him with his left hand. At this juncture, Dagunan turned around, and Tuardon drew his own gun and shot Dagunan once. Tuardon then went out and tucked his gun. Thereafter, Flores came rushing towards him so Tuardon drew his gun again and shot him. After shooting Flores, he found himself shocked that he had shot someone.[10]

Dima-ala, in his defense, took the witness stand, together with Abelardo Basinilio, Jr., and Engr. Rogelio Diaz, as his witnesses. He denied the charges against him and invoked alibi as his defense. He claimed that he did not hand the gun to Tuardon.

The RTC Ruling

In its March 30, 2004 Decision, the RTC found Tuardon guilty beyond reasonable doubt of murder in Criminal Case No. 99-2257, and frustrated murder in Criminal Case No. 99-2258. Dima-ala, on the other hand, was acquitted in the two

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[9] *Id.* at 137.

[10] *Id.* at 138.

cases on reasonable doubt. The trial court was of the view that the prosecution failed to present sufficient evidence of his participation in the commission of the crime either as principal by direct participation or as conspirator.

The RTC dismissed Tuardon's claim of self-defense noting that his version of how the events transpired was inconsistent with the medical findings as to the injury sustained by Dagunan. It further observed that Tuardon's testimony was unclear and inconsistent on how he defended himself.

In convicting Tuardon of murder and frustrated murder, the RTC appreciated the presence of the aggravating circumstance of treachery. It stated that treachery attended the killing of Dagunan as he was shot at the base of his head, suddenly and unexpectedly, while he was in the act of urinating. As to Flores, the trial court noted that he was shot at the chest while unarmed and unprepared. Thus, Dagunan and Flores were not given any opportunity to defend themselves. The dispositive portion of the decision reads:

> WHEREFORE, in Criminal Case No. 99-2257, the Court finds accused Edwin Tuardon GUILTY beyond reasonable doubt of the crime of Murder, under Article 248 of the Revised Penal Code as charged in the Information and in Criminal Case No. 99-2258, the Court finds accused Edwin Tuardon GUILTY beyond reasonable doubt of the crime of Frustrated Murder under Article 248 of the Revised Penal Code, in relation to Article 50 thereof, as charged in the Information, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA, to indemnify the heirs of the deceased victim PO1 Jerry Dagunan the amount of Fifty Thousand Pesos (₱50,000.00) for the crime of murder and an indeterminate penalty of EIGHT (8) YEARS and ONE (1) DAY, of *prision mayor* as minimum, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS, of *reclusion temporal* as maximum, to pay the victim Edwin Flores the amount of Thirty Thousand Pesos (₱30,000.00) by way of indemnity for the crime of Frustrated Murder and to pay the costs.
>
> Based on reasonable doubt, accused Ronnel Dima-ala is ACQUITTED.
>
> It is ordered that accused Edwin Tuardon be immediately remitted to the National Penitentiary.

It is further ordered that accused Ronnel Dima-ala be immediately released from detention unless charged of other offense.

SO ORDERED.[11]

Aggrieved, Tuardon elevated an appeal before the CA.

The CA Ruling

In its assailed October 29, 2015 Decision, the CA affirmed, with modification, the March 30, 2004 RTC decision. It concurred with the RTC that treachery attended the killing of Dagunan and that Flores was rendered defenseless because of Tuardon's sudden attack. It opined that the injury sustained by Flores could have caused his death had it not been for the timely medical intervention. Thus, the CA concluded that the RTC did not err in convicting Tuardon for murder and frustrated murder. It did not give credence to his claim of self-defense because he failed to establish its elements. The appellate court pointed out that no unlawful aggression was initiated by Dagunan, as it noted that he was then just urinating.[12]

The CA, nevertheless, modified the RTC judgment with respect to the monetary awards.[13] The dispositive portion of the decision reads:

WHEREFORE, premises considered, the instant appeal is hereby DENIED. Accordingly, the assailed Decision dated 30 March 2004 of the Regional Trial Court, Branch 61, 6th Judicial Region, Kabankalan City, Negros Occidental, in Criminal Case Nos. 99-2257 and 99-2258 is hereby AFFIRMED with MODIFICATIONS as follows:

For the murder of PO1 Jerry Dagunan:

1. The award of civil indemnity is increased to Php 75,000.00;
2. Moral damages in the amount of Php 75,000.00;
3. Exemplary damages in the amount of Php 30,000.00; and
4. Temperate damages in the amount of Php 25,000.00.

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[11] *Rollo*, p. 153.

[12] *Id.* at 13-15.

[13] *Id.* at 16-17.

For the frustrated murder of Edwin Flores:

1. Civil indemnity is increased to Php 40,000.00;
2. Moral damages in the amount of Php 40,000.00;
3. Temperate damages in the amount of Php 25,000.00; and
4. Exemplary damages in the amount of Php 20,000.00.

Interest on all damages awarded is imposed at the rate of 6% per annum from date of finality of this judgment until fully paid.

SO ORDERED.[14]

Hence, this appeal.

In its Resolution,[15] dated September 14, 2016, the Court required both parties to file their respective supplemental briefs, if they so desired. Both parties, however, opted to adopt the briefs they filed before the CA as their supplemental briefs.[16]

The Position of the Accused

Tuardon insists that he acted in self-defense. He contends that Dagunan was the unlawful aggressor as he attempted to draw his gun after their heated exchange. According to him, shooting Dagunan was the only means available for him to repel his aggression. Tuardon further claims that assuming that he is liable for Dagunan's death and for the injury sustained by Flores, he cannot be convicted of murder and frustrated murder as the qualifying circumstances of treachery and evident premeditation were not present. He claims that when Dagunan insulted him, Dagunan had every reason to expect a reprisal from him, putting himself on guard for any attack. With respect to the shooting of Flores, Tuardon asserts that when Flores rushed towards him after witnessing what had transpired, he already exposed himself to any possible harm that could befall upon him. Thus, he was forewarned of the impending danger upon himself.[17]

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[14] *Id.* at 18.

[15] *Id.* at 25.

[16] *Id.* at 27-29; 33-34.

[17] *Id.* at 251-260.

The Court's Ruling

Tuardon did not act in self-defense

In criminal cases, the burden of proof generally lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt rather than upon the accused that he was in fact innocent. It is a time-honored rule, however, that when the accused admits killing the victim and invokes self-defense as a justifying circumstance, it is incumbent upon him to prove the said circumstance by clear and convincing evidence.[18] Thus, the accused must rely on the strength of his evidence and not on the weakness of that of the prosecution, for even if the latter is weak, it could not be questioned that the accused has admitted the killing.[19]

To successfully claim self-defense, the accused must satisfactorily prove the concurrence of all of its elements. Under Article 11 of the Revised Penal Code (*RPC*), any person who acts in defense of his person or rights does not incur any criminal liability provided that the following circumstances concur: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself. The most important of the three is the element of unlawful aggression because without it, there could be no self-defense, whether complete or incomplete.[20]

As can be gleaned from the records, Tuardon failed to discharge this burden. The Court concurs with the trial court's assessment that Tuardon's claim of self-defense could not be given any credence.

As observed by the RTC, Tuardon's testimony was inconsistent and unclear on how he defended himself. During

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[18] *People of the Philippines v. Samson*, G.R. No. 214883, September 2, 2015.

[19] *People of the Philippines v. Delima and Areo*, 452 Phil. 36, 44 (2003).

[20] *Flores v. People of the Philippines*, 705 Phil. 119 (2013).

his direct examination, Tuardon claimed that he shot Dagunan "when Dagunan turned and held his waist and xxx was about to reach for his gun xxx."[21] Tuardon narrated that when Dagunan drew his gun holstered at his right waist, he stopped him by using his left hand; and while he was holding Dagunan, he drew his gun from his holster at his back using his right hand and shot him once. During his cross-examination, Tuardon testified:

COURT:

He was standing beside Patrolman Dagunan. Then you were urinating?

A. I was finished.

Q. And then Dagunan was able to urinate?
A. Yes.

Q. So, he was beside you?
A. Yes, he was on my left.

x x x x x x x x x

Q. When you said he turned, he turned towards you, facing you?
A. Yes, he turned but he was not able to face me because I was able to hold him at the back.

COURT:

Tell us from what direction?

A. He turned to the left but he was not able to face me because I was able to hold him at the back.

Q. So, Gerry Dagunan turned towards you but you hold his gun?
A. Yes.

Q. So Dagunan was eventually facing you?
A. He was not able to turn towards me.

Q. But you were already holding his gun?
A. Yes, I have pinned him to the wall.

Q. But he was not able to reach his gun because of your pinning him to the wall when he turned to you?
A. Yes, but he was forcing to raise it.

[21] *Rollo*, p. 248.

Q. Then you [shot] him?
A. Yes, then I [shot] him.[22]

The Court finds Tuardon's story incredible. He claimed that he and Dagunan were standing beside each other while urinating. Dagunan was near Tuardon's left side; meaning, Tuardon was on the right side of Dagunan. From their relative positions, according to Tuardon, Dagunan was about to draw his gun, holstered at his right waist, when Tuardon stopped him using his left hand. And from this position, Tuardon could certainly pin Dagunan to the wall. It is at this point that the version of the defense ceases to be believable.

If Tuardon's story is to be believed, then the point of entry of the bullet should be at the right side of Dagunan's head. This was, however, belied by the findings of Dr. Ayala in his medico-legal report[23] that Dagunan was shot at the base of his head through and through causing brain tissue damage. Further, as illustrated in the sketch,[24] attached to the medico-legal report, the point of entry of the bullet which killed Dagunan was at the back-left portion of his head and the point of exit was at the right portion of his head. These medico-legal findings are consistent with the version of Flores who testified that:

ATTY. PARREÑO:

Q. Now, using me as Patrolman Jerry Dagunan in the act of urinating, where was Edwin Tuardon when he shot Jerry Dagunan, will you kindly demonstrated?

INTERPRETER:

As illustrated by the witness, Edwin Tuardon was situated immediately at his left backward pointing the gun at the shoulder level.

ATTY. PARREÑO:
Q. And that was the time when he fired the shot?

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[22] TSN of Edwin Tuardon, pp. 51-54, April 23, 2003.

[23] Records, p. 9.

[24] *Id.* at 10.

A. Yes, sir.[25] [Emphases supplied]

Contrary to Tuardon's claim, the prosecution was able to establish that Dagunan was shot from behind while in the act of urinating. This was amply supported by the testimony of eyewitness Flores and by the findings in the medical and death certificates issued relating to Dagunan's death. Thus, there was no unlawful aggression on the part of Dagunan to speak of. As observed by the trial court:

> The fact that victim PO1 Jerry Dagunan was shot at the back of his head which caused his death is shown in his Death Certificate (Exhibit "C") and the Sketch of Human Anatomy (Exhibit "C-1", "C-1-a", "C-1-b" and "C-1-c") issued and attested to by Dr.Isagani Ayala to the effect that said victim was shot at the base of his head through and through causing brain tissue damage with powder burns noted.[26]

Moreover, as testified to by Flores, the attack was sudden and unexpected. Tuardon rushed to where Dagunan was and immediately shot him. Under these circumstances, the Court could not imagine how Dagunan could have presented any aggression.

The Court has no reason to doubt Flores' testimony and positive declaration. Jurisprudence dictates that the findings of the trial court on the credibility of witnesses deserve a high degree of respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could have altered the conviction of the appellant.[27] This is especially true in this case considering that the testimony of Flores was corroborated by the medical findings. Thus, the Court finds no reason to deviate from this rule.

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[25] TSN of Edwin Flores, March 21, 2000.

[26] CA *rollo*, p. 140.

[27] *People of the Philippines v. Castillano*, 427 Phil. 309, 326-327 (2002).

Treachery attended the killing of Dagunan

Tuardon insists that the RTC and the CA erred in appreciating the attendance of treachery in the killing of Dagunan. He asserts that his prior heated exchange with Dagunan sufficiently forewarned the latter of any retaliation on his part.

Tuardon's argument fails to impress. Treachery indeed attended the killing of Dagunan.

"There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make."[28] The essence of treachery is the sudden and unexpected attack by the aggressor on the unsuspecting victim, depriving the latter of any real chance to defend himself, thus ensuring its commission without risk to the aggressor and without the slightest provocation on the part of the victim.[29]

In this case, the prosecution was able to establish that Tuardon's attack on Dagunan was attended by treachery. Flores, on direct examination, narrated and demonstrated how the attack was effected, thus:

ATTY. PARREÑO:

Q. So, when you were following him going towards the C.R., have you noticed the presence of Edwin Tuardon?

A. Yes, sir.

Q. What was he doing?

A. While I was following Jerry Dagunan, immediately Edwin Tuardon [rushed] in between us.

Q. So, in effect Jerry Dagunan was followed by Edwin Tuardon and that you followed. Is that what you said?

A. Yes, sir.

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[28] REVISED PENAL CODE, Article 14, Paragraph 16.

[29] *People of the Philippines v. Samson*, 427 Phil. 248, 262 (2002); *People of the Philippines v. Vallespin*, 439 Phil. 816, 824 (2002).

Q. Now, was Jerry Dagunan able to enter the C.R.?
A. Yes, sir, but just at the main door of the C.R.

Q. Why, the C.R. [was] fenced?
A. Because of so many people, he just stayed or stood up at the main door of the C.R.

Q. While Jerry Dagunan was standing at the main door of the C.R., can you recall what happened?
A. Immediately he was shot up by Edwin Tuardon and I immediately commented "oh."

Q. Mr. Witness, just answer the question only.
So, Jerry Dagunan was situated at the main door or entrance of the C.R. facing where?

INTERPRETER:

The witness illustrated that Jerry Dagunan was at the oblique side (kilid) of the door of the C.R. and he was in the act of urinating.

ATTY. PARREÑO:
Q. Now, using me as Patrolman Jerry Dagunan in the act of urinating, where was Edwin Tuardon when he shot Jerry Dagunan, will you kindly demonstrated?

INTERPRETER:

As illustrated by the witness, Edwin Tuardon was situated immediately at his left backward pointing the gun at the shoulder level.

ATTY. PARREÑO:
Q. And that was the time when he fired the shot?
A. Yes, sir.[30] [Emphases supplied]

From the foregoing, it is evident that the attack by Tuardon was sudden and unexpected without the slightest provocation on the part of Dagunan. Tuardon immediately pursued the unsuspecting Dagunan when the latter was on his way to relieve himself. Tuardon then executed his felonious deed against Dagunan while he was in the act of urinating and with his back

[30] TSN of Edwin Flores, March 21, 2000.

towards his aggressor. Under such circumstances, there was no way that Dagunan could have defended himself. Clearly, he could not have expected that he would be attacked. In short, Tuardon, in executing the crime, employed means, methods or forms which tend, directly and specially, to ensure its execution, without risk to himself arising from the defense which Dagunan might make. The attack was deliberate, sudden and unexpected. The attendance of treachery in the killing of Dagunan could not, therefore, be denied.

In view of the presence of the qualifying circumstance of treachery, the crime committed by Tuardon is murder under Article 248 of the RPC, which is punishable by *reclusion temporal*, in its maximum period, to death. There being no other aggravating or mitigating circumstances, the RTC and the CA were correct in imposing the penalty of *reclusion perpetua*.[31]

No Treachery with respect to the Attack on Flores

The Court, however, finds merit in Tuardon's contention that he could not be convicted of frustrated murder in the shooting of Flores.

Both the RTC and the CA classified Tuardon's sudden attack on Flores as frustrated murder because the latter was unarmed, unprepared, and defenseless. The fact, however, that the victim was unarmed at the time of the attack does not make the same treacherous.[32] In the same vein, the mere suddenness and unexpectedness of the assault does not amount to treachery.[33] As previously discussed, the attack must be deliberate and without warning and the means adopted to carry it must have been purposely sought to ensure the success of the sinister deed.

In this case, evidence for both the defense and the prosecution would show that the shooting of Flores, as well as the means

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[31] REVISED PENAL CODE, Article 64, par. 1.

[32] *People of the Philippines v. Dagani*, 530 Phil. 501, 520 (2006).

[33] *People of the Philippines v. Watamama*, 734 Phil. 673, 682 (2014).

to carry it, was neither unexpected nor consciously adopted by Tuardon. As regards his shooting, Flores narrated:

> ATTY. PARREÑO:
> Q. Now, when Patrolman Jerry Dagunan fell on the floor, what did you do?
> A. I commented "oh what happened to Patrolman Jerry Dagunan" he turned his back and then he shot me.[34]

This is essentially similar to Tuardon's account where he said:

> ATTY. TABINO:
> Q. What happened after you shot Jerry Dagunan?
> A. After I shot him I went out and put on my gun.
>
> Q. Then, what happened after that?
> A. And his companion while I was on the door was running towards me.
>
> Q. What happened after that?
> A. Since I saw him running towards me I again draw my gun and shoot him.[35]

The testimonies of Flores and Tuardon disclose that the latter's mode of attack on the former could not have been consciously adopted. Indeed, while the attack was sudden, it was evidently done on impulse — Tuardon shot Flores only because the latter was rushing towards him. The shooting was evidently not deliberate as Flores was not at the scene earlier.

Considering that no treachery or any other qualifying aggravating circumstance attended the shooting of Flores, Tuardon can only be convicted of the crime of frustrated homicide under Article 249, in relation to Article 50 of the RPC.

As to the penalty to be imposed, the Court, in *Ibanez v. People*,[36] explained in this wise:

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[34] TSN of Edwin Flores, March 21, 2000.

[35] TSN of Edwin Tuardon, April 23, 2003.

[36] *Ibanez v. People*, G.R. No. 190798, January 27, 2016.

Article 249 of the Revised Penal Code provides that the imposable penalty for homicide is reclusion temporal. Article 50 of the same Code states that the imposable penalty upon principals of a frustrated crime shall be the penalty next lower in degree than that prescribed by law for the consummated felony. Hence, frustrated homicide is punishable by prision mayor. Applying the Indeterminate Sentence Law, there being no aggravating or mitigating circumstances present in this case, the minimum penalty to be meted on the petitioners should be anywhere within the range of six (6) months and one (1) day to six (6) years of *prision correccional* and the maximum penalty should be taken from the medium period of *prision mayor* ranging from eight (8) years and one (1) day to ten (10) years. xxx.[37]

Appropriate Monetary Awards

Jurisprudence is settled that when death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[38] In *People v. De Jesus*,[39] the Court held that the award of ₱25,000.00 as temperate damages in homicide or murder cases was proper when the actual expenses incurred due to the death of the victim were not satisfactorily proven.

In *People v. Jugueta*,[40] the Court summarized the amounts of damages which may be awarded for different crimes. In the said case, the Court held that for the crime of murder, where the penalty imposed is *reclusion perpetua*, the following amounts may be awarded: (1) ₱75,000.00, as civil indemnity; (2) ₱75,000.00, as moral damages; and (3) ₱75,000.00, as exemplary damages. On the other hand, for the crime of frustrated homicide, the following amounts may be awarded: (1) ₱30,000.00, as civil indemnity; and (2) ₱30,000.00, as moral damages.

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[37] *Id.*

[38] *People of the Philippines v. Dela Rosa*, 711 Phil. 239, 249 (2013).

[39] 655 Phil. 657, 676 (2011).

[40] G.R. No. 202124, April 5, 2016.

All monetary awards shall earn interest at the rate of six (6) percent per annum reckoned from the finality of this decision until fully paid.[41]

WHEREFORE, the October 29, 2015 Decision of the Court of Appeals in CA-G.R. CR HC No. 00053 is hereby **MODIFIED** to read as follows:

In **Criminal Case No. 99-2257**, finding accused Edwin Tuardon GUILTY beyond reasonable doubt of the crime of Murder, under Article 248 of the Revised Penal Code, the Court sentences him to suffer the penalty of *reclusion perpetua*. Further, accused Edwin Tuardon is hereby ordered to indemnify the heirs of the deceased PO1 Jerry Dagunan the following: (i) ₱75,000.00, as civil indemnity; (ii) ₱75,000.00, as moral damages; (iii) P75,000.00, as exemplary damages; and (iv) ₱25,000.00, as temperate damages.

In **Criminal Case No. 99-2258**, finding accused Edwin Tuardon GUILTY beyond reasonable doubt of Frustrated Homicide, under Article 249, in relation to Article 50 of the Revised Penal Code, the Court sentences him to suffer the penalty of imprisonment ranging from Six (6) Years of *Prision Correccional*, as minimum, to Eight (8) Years and One (1) Day of *Prision Mayor*, as maximum; and to indemnify Edwin Flores the following: (i) P30,000.00, as civil indemnity; (ii) P30,000.00, as moral damages; (iii) P20,000.00, as exemplary damages; and (iv) P25,000.00, as temperate damages.

All monetary awards shall earn interest at the rate of six (6) percent per annum reckoned from the finality of this decision until fully paid.

SO ORDERED.

Carpio, Acting C. J. (Chairperson), *Velasco,Jr.*,[*] and *Peralta, JJ.*, concur.

Leonen, J., on official leave.

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[41] *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

[*] Per Special Order No. 2416-U dated January 4, 2017.

SPECIAL THIRD DIVISION

[G.R. No. 180654. March 6, 2017]

NATIONAL POWER CORPORATION, *petitioner, vs.* **PROVINCIAL GOVERNMENT OF BATAAN, SANGGUNIANG PANLALAWIGAN OF BATAAN, PASTOR B. VICHUACO (IN HIS OFFICIAL CAPACITY AS PROVINCIAL TREASURER OF BATAAN) and THE REGISTER OF DEEDS OF THE PROVINCE OF BATAAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; COURT OF TAX APPEALS; REPUBLIC ACT NO. 9282 (AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS); THE COURT OF TAX APPEALS IS VESTED WITH THE EXCLUSIVE APPELLATE JURISDICTION OVER APPEALS FROM THE DECISIONS, ORDERS OR RESOLUTIONS OF THE REGIONAL TRIAL COURTS IN LOCAL TAX CASES ORIGINALLY DECIDED OR RESOLVED BY THEM IN THE EXERCISE OF THEIR ORIGINAL OR APPELLATE JURISDICTION.— The Court of Appeals correctly dismissed the appeal for lack of jurisdiction. x x x. Republic Act No. 9282, which amended Republic Act No. 1125, took effect on April 23, 2004, and significantly expanded the extent and scope of the cases that the Court of Tax Appeals was tasked to hear and adjudicate. Under Section 7, paragraph (a)(3), the Court of Tax Appeals is vested with the exclusive appellate jurisdiction over, among others, appeals from the "decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction." The case *a quo* is a local tax case that is within the exclusive appellate jurisdiction of the Court of Tax Appeals. Parenthetically, the case arose from the dispute between Napocor and respondents over the purported franchise tax delinquency of Napocor. Although the complaint filed with the trial court is a *Petition for declaration of nullity of foreclosure sale with prayer for*

preliminary mandatory injunction, a reading of the petition shows that it essentially assails the correctness of the local franchise tax assessments by the Provincial Government of Bataan. Indeed, one of the prayers in the petition is for the court *a quo* to declare Napocor "as exempt from payment of local franchise taxes." Basic is the rule that allegations in the complaint and the character of the relief sought determine the nature of an action. In order for the trial court to resolve the complaint, the issues regarding the correctness of the tax assessment and collection must also necessarily be dealt with. As correctly ruled by the Court of Appeals, "the issue of the validity and legality of the foreclosure sale is essentially related to the issue of the demandability of the local franchise tax." Therefore, the dismissal of Napocor's appeal by the Court of Appeals was in order.

2. ID.; CIVIL PROCEDURE; PARTIES; A REAL PARTY IN INTEREST IS THE PARTY WHO STANDS TO BE BENEFITED OR INJURED BY THE JUDGMENT IN THE SUIT, OR THE PARTY ENTITLED TO THE AVAILS OF THE SUIT; PETITIONER-NATIONAL POWER CORPORATION (NAPOCOR) IS A REAL PARTY IN INTEREST IN CASE AT BAR.— "A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit." In the instant case, petitioner's complaint has sought not only the nullification of the foreclosure sale but also a declaration from the trial court that it is exempt from the local franchise tax. The action began when respondent ignored petitioner's claim for exemption from franchise tax, and pursued its collection of the franchise tax delinquency by issuing the warrant of levy and conducting the sale at public auction – where the Provincial Government of Bataan was declared as purchaser – of the transmission assets, despite the purported prior mutual agreement to suspend administrative remedies for the collection of taxes. The assets were sold to enforce collection of a franchise tax delinquency **against** the petitioner. Petitioner thus had to assail the correctness of the local franchise tax assessments made against it by instituting the complaint with the Regional Trial Court; otherwise, the assessment would become conclusive and unappealable. Certainly, petitioner is a real party in interest, which stands to gain or lose from the judgment that the trial court may render.

3. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; FRANCHISE TAX; NAPOCOR IS NOT LIABLE TO PAY THE ASSESSED FRANCHISE TAX FOR ITS BUSINESS OF GENERATING ELECTRICITY FOR THE LATTER PART OF 2001 UP TO 2003, BY VIRTUE OF THE ELECTRIC POWER INDUSTRY REFORM ACT (EPIRA) WHICH EFFECTIVELY REMOVED POWER GENERATION FROM THE AMBIT OF LOCAL FRANCHISE TAXES; THE POWER GENERATION IS NO LONGER CONSIDERED A PUBLIC UTILITY OPERATION, AND COMPANIES WHICH SHALL ENGAGE IN POWER GENERATION AND SUPPLY OF ELECTRICITY ARE NO LONGER REQUIRED TO SECURE A NATIONAL FRANCHISE.— Section 137 [of the Local Government Code] is categorical in stating that franchise tax can only be imposed on businesses enjoying a franchise. This goes without saying that without a franchise, a local government unit cannot impose franchise tax. x x x. The court *a quo's* reliance on the ruling in *NPC v. City of Cabanatuan* was misplaced. That case involved franchise taxes, which became due to the local government unit concerned prior to the passage of Republic Act No. 9136 or the EPIRA, and the issue of exemption from payment of franchise tax under EPIRA was not discussed. Indeed, the enactment of EPIRA separated the transmission and sub-transmission functions of the state-owned Napocor from its generation function, and transferred all its transmission assets to the then newly-created TRANSCO, which was wholly owned by PSALM Corporation at that time. Power generation is no longer considered a public utility operation, and companies which shall engage in power generation and supply of electricity are no longer required to secure a national franchise. This is expressly provided under Section 6 of EPIRA x x x. EPIRA effectively removed power generation from the ambit of local franchise taxes. Hence, as regards Napocor's business of generating electricity, the franchise taxes sought to be collected by the Provincial Government of Bataan for the latter part of 2001 up to 2003 are devoid of any statutory basis.

4. ID.; ID.; ID.; ID.; PRIOR TO THE TRANSFER OF ALL ITS TRANSMISSION ASSETS TO THE NATIONAL TRANSMISSION CORPORATION (TRANSCO), THE

NAPOCOR IS SUBJECT TO LOCAL FRANCHISE TAX FOR ITS ELECTRIC TRANSMISSION FUNCTION; FORECLOSURE SALE OF THE PROPERTIES DECLARED NULL AND VOID, AS THE PROPERTIES WERE ALREADY OWNED BY TRANSCO BY VIRTUE OF EPIRA AT THE TIME OF LEVY AND AUCTION.— As regards Napocor's electric transmission function, under Section 8 of the same law, all transmission assets of Napocor were to be transferred to TRANSCO within six (6) months from the effectivity of EPIRA, or by December 26, 2001. Hence, until the transfer date of the transmission assets, which by express provision of EPIRA **shall not be later than December 26, 2001**, these assets, as well as the franchise, belong to and are operated by Napocor, and the latter is consequently subject to the local franchise tax. Even so, it is quite apparent that at the time of the levy and auction of the 14 properties sometime in January 2004 and March 2004, respectively, the properties were by virtue of EPIRA already owned by TRANSCO. Thus, the foreclosure sale of the properties must be declared null and void.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Bataan Provincial Legal Office for respondents.

R E S O L U T I O N

LEONEN, *J.*:

For resolution is respondents' Motion for Reconsideration[1] of this Court's April 21, 2014 Decision,[2] which granted the petition of National Power Corporation (Napocor), and set aside the Court of Appeals' Resolution[3] dated November 27, 2007.

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[1] *Rollo*, pp. 996–1006.

[2] 733 Phil. 34 (2014) [Per *J.* Abad, Third Division].

[3] *Rollo*, pp. 425–435. The Resolution was penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Andres B. Reyes, Jr. and Jose C. Mendoza of the Sixth Division, Court of Appeals, Manila.

The Decision further remanded "the case to the Regional Trial Court so that the Power Sector Assets and Liabilities Management Corporation [PSALM Corporation] and the National Transmission Corporation [TRANSCO] may be impleaded as proper parties."[4]

Recalling the facts of this case:

On March 28, 2003, petitioner National Power Corporation (NPC) received a notice of franchise tax delinquency from the respondent Provincial Government of Bataan (the Province) for ₱45.9 million covering the years 2001, 2002, and 2003. The Province based its assessment on [Napocor's] sale of electricity that it generated from two power plants in Bataan. Rather than pay the tax or reject it, [Napocor] chose to reserve its right to contest the [amounts of franchise tax stated in the notice, including the] computation pending the decision of the Supreme Court in *National Power Corporation v. City of Cabanatuan,* a case [where] the issue of [Napocor's] exemption from the payment of local franchise tax was then pending.

On May 12 and 14, 2003 the Province again sent notices of tax due to [Napocor], calling its attention to the Court's decision in *National Power Corporation v. City of Cabanatuan* that held [Napocor] liable for the payment of local franchise tax. [Napocor] replied, however, that it had ceased to be liable for the payment of that tax after Congress enacted Republic Act (R.A.) 9136, also known as the Electric Power Industry Reform Act (EPIRA) that took effect on June 26, 2001. The new law relieved [Napocor] of the function of [transmitting electricity] beginning that year. Consequently, the Province has no right to further assess it for the 2001, 2002, and 2003 local franchise tax.

Ignoring [Napocor's] view, the Province issued a "Warrant of Levy" [dated January 29, 2004][5] on 14 real properties that it used to own in Limay, Bataan. [Through a letter dated February 17, 2004, Napocor requested a "deferment of [the Province's] chosen course of action and give [Napocor] Management and Board of Directors, as well as the OSG, to reconsider the matter at hand."][6] In March

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[4] 733 Phil. 34, 41 (2014) [Per *J.* Abad, Third Division].

[5] *Rollo*, p. 470.

[6] *Id.* at 471.

2004 the Province caused their sale at public auction with itself as the winning bidder. Shortly after, [Napocor] received a copy of the Certificate of Sale of Real Property covering the auctioned properties for ₱60,477,285.22, the amount of its franchise tax delinquency, [including surcharges and interest].

On July 7, 2004, [Napocor] filed with the Regional Trial Court (RTC) of Mariveles, Bataan, a petition for declaration of nullity of the foreclosure sale with prayer for preliminary mandatory injunction against the Province, the provincial treasurer, and the *Sangguniang Panlalawigan*.

[Napocor] alleged that the foreclosure had no legal basis since R.A. 7160 which authorized the collection of local franchise tax had been modified by the EPIRA. The latter law provided that power generation is not a public utility operation requiring a franchise, hence, not taxable. What remains subject to such tax is the business of transmission and distribution of electricity since these required a national franchise. As it happened, [Napocor] had ceased by operation of the EPIRA in 2001 to engage in power transmission, given that all its facilities for this function, including its nationwide franchise, had been transferred to the National Transmission Corporation (TRANSCO).

Thus, [Napocor] asked the RTC to issue a preliminary injunction, enjoining the transfer of title and the sale of the foreclosed lands to Bataan and, after trial, to make the injunction permanent, declare [Napocor] exempt from the local franchise tax and annul the foreclosure sale.

On November 3, 2005 the RTC dismissed [Napocor's] petition, stating that the franchise tax was not based on ownership of property but on [Napocor's] exercise of the privilege of doing business within Bataan. Further, [Napocor] presented no evidence that it had ceased to operate its power plants in that jurisdiction.

[Napocor] appealed the RTC Decision to the Court of Appeals (CA) but the Province moved to dismiss the same for lack of jurisdiction of that court over the subject matter of the case. The Province pointed out that, although [Napocor] denominated its suit before the RTC as one for declaration of nullity of foreclosure sale, it was essentially a local tax case questioning the validity of the Province's imposition of the local franchise tax. Any appeal from the action should, therefore, be lodged with the Court of Tax Appeals (CTA). On November 27,

2007 the CA granted the Province's motion and dismissed the petition on the ground cited.[7] (Citation omitted)

On January 18, 2008, Napocor filed by registered mail a Petition for Review on Certiorari,[8] assailing the correctness of the Court of Appeals' dismissal of its appeal for lack of jurisdiction. Napocor prayed that "judgment be rendered reversing and setting aside the Court of Appeals' Resolution dated November 27, 2007 and in lieu thereof, directing said Court to reinstate and give due course to petitioner's appeal in CA-G.R. CV No. 87218."[9]

In a Decision dated April 21, 2014, this Court granted the petition and set aside the resolution of the Court of Appeals. This Court ruled that with the transfer of Napocor's power transmission and generation functions, and their associated facilities by operation of the Electric Power Industry Reform Act (EPIRA) in June 2001, Napocor was not the proper party subject to the local franchise tax.[10] The Province also could not levy on the transmission facilities to satisfy the tax assessment against Napocor.[11] This Court further found the proceedings in the court *a quo* a nullity for failure to include PSALM Corporation and TRANSCO, companies which were indispensable parties to the case.[12] At this point, this Court opined that it did not matter where the Regional Trial Court decision was appealed, whether before the Court of Appeals or the Court of Tax Appeals,[13] and remanded the case to the Regional Trial Court so that PSALM Corporation and TRANSCO may be impleaded as proper parties.[14]

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[7] 733 Phil. 34, 36–38 (2014) [Per *J.* Abad, Third Division].

[8] *Rollo*, pp. 370–419.

[9] *Id.* at 418.

[10] 733 Phil. 34, 40 (2014) [Per *J.* Abad, Third Division].

[11] *Id.* at 39.

[12] *Id.* at 40.

[13] *Id.*

[14] *Id.* at 41.

Hence, this Motion for Reconsideration[15] was filed by the respondents. The issues raised in the motion are:

1. Whether Napocor is the real party in interest; and
2. Whether the foreclosure sale on March 2, 2004 is valid.

Respondents argue that from this Court's disquisition on the purported transfer of Napocor's power generation and transmission functions to PSALM Corporation, and its corresponding generation and transmission facilities to TRANSCO, it follows that petitioner was not the real party in interest and had no legal personality to file the complaint before the Regional Trial Court in the first place.[16] Accordingly, they pray that instead of remanding the case to the trial court for the inclusion of indispensable parties, the complaint should be ordered dismissed for lack of cause of action.[17]

Respondents further contend that Napocor was estopped from invoking the EPIRA as a shield against the franchise tax impositions.[18] They assert that Napocor could have raised the EPIRA provisions at the earliest instance when it received the notice of franchise tax delinquency on March 28, 2003, close to two (2) years after the effectivity of EPIRA. Instead, Napocor merely chose to reserve its right to contest the franchise tax assessment and suspend its payment pending the decision of this Court in *NPC v. City of Cabanatuan*.[19]

Respondents lastly argue that EPIRA was not self-executing and the transfer of the transmission functions and assets to TRANSCO was not made to take place by operation of law.[20] It cites Section 8 of EPIRA, which provides that "[w]ithin six

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[15] *Id*. at 996–1006.

[16] *Id.* at 998.

[17] *Id*. at 999.

[18] *Id*. at 1000.

[19] *Id*.

[20] *Id*. at 1002.

(6) months from the effectivity of this Act, the transmission and subtransmission facilities of [Napocor] and all other assets related to transmission operations, including the nationwide franchise of [Napocor] for the operation of the transmission system and the grid, shall be transferred to the TRANSCO." It also renders that "[p]rior to the transfer of the transmission functions by [Napocor] to TRANSCO, and before promulgation of the Grid Code, ERC shall ensure that [Napocor] shall provide to all electric power industry participants open and non-discriminatory access to its transmission system."[21] Similarly, respondents assert that the transfer of the generation assets to PSALM Corporation did not take place upon the effectivity of EPIRA, citing Section 47 of the law.[22] Thus, the court *a quo* correctly dismissed Napocor's complaint on the latter's failure "to present evidence that it no longer owned [the property] or operated the business subject to local franchise tax."[23]

In its Comment,[24] petitioner partially agrees with the respondents that the case should not be ordered remanded to the court of origin. According to petitioner, the trial court will then be "confronted with a bizarre situation of ordering PSALM and the TRANSCO to be party-plaintiffs/petitioners when, in truth and in fact, there is no actual controversy confronting them at the moment" as no assessments have yet been issued to these corporations.[25]

However, contrary to respondents' submissions, petitioner avers that "the instant case is not dismissible on the ground of lack of cause of action."[26] Petitioner asserts that it "has a valid cause of action against respondents for the nullification of the foreclosure sale" since, as found by this Court, it is not the

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[21] *Id.* at 1002–1003.

[22] *Id.* at 1003.

[23] *Id.* at 1002.

[24] *Id.* at 1014–1026.

[25] *Id.* at 1018.

[26] *Id.* at 1017.

proper party subject to the local franchise tax being imposed by respondents.[27]

On respondents' claim of estoppel, petitioner submits that as a government-owned and controlled corporation, it is "protected by the principle that estoppel does not lie against the government as it is not bound by the errors committed by its agents."[28] Moreover, petitioner maintains that it has consistently invoked that it is not liable for the local franchise tax being collected by respondents because "it has ceased to operate its electric transmission functions upon effectivity of the EPIRA in 2001."[29] Allegedly, this has been its stand from the time it filed its complaint with the Regional Trial Court.[30]

Lastly, petitioner counters that it does not need to present "evidence to prove its position that it no longer owned or operated the business subject to local franchise tax," and that the properties, which respondent Provincial Government of Bataan levied on, did not belong to it.[31]

We partially grant the motion for reconsideration.

I

The Court of Appeals correctly dismissed the appeal for lack of jurisdiction. We deem it proper to clarify the last sentence in the decision that "[i]t did not matter where the RTC decision was appealed, whether before the C[ourt of] A[ppeals] or the C[ourt of] T[ax] A[ppeals]."[32]

Republic Act No. 9282, which amended Republic Act No. 1125, took effect on April 23, 2004, and significantly expanded the extent and scope of the cases that the Court of Tax Appeals

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[27] *Id.*

[28] *Id.* at 1019.

[29] *Id.*

[30] *Id.*

[31] *Id.* at 1023.

[32] 733 Phil. 34, 40 (2014) [Per *J.* Abad, Third Division].

was tasked to hear and adjudicate. Under Section 7, paragraph (a)(3), the Court of Tax Appeals is vested with the exclusive appellate jurisdiction over, among others, appeals from the "decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction."

The case *a quo* is a local tax case that is within the exclusive appellate jurisdiction of the Court of Tax Appeals. Parenthetically, the case arose from the dispute between Napocor and respondents over the purported franchise tax delinquency of Napocor. Although the complaint filed with the trial court is a *Petition for declaration of nullity of foreclosure sale with prayer for preliminary mandatory injunction*, a reading of the petition shows that it essentially assails the correctness of the local franchise tax assessments by the Provincial Government of Bataan. Indeed, one of the prayers in the petition is for the court *a quo* to declare Napocor "as exempt from payment of local franchise taxes."[33] Basic is the rule that allegations in the complaint and the character of the relief sought determine the nature of an action.[34] In order for the trial court to resolve the complaint, the issues regarding the correctness of the tax assessment and collection must also necessarily be dealt with. As correctly ruled by the Court of Appeals, "the issue of the validity and legality of the foreclosure sale is essentially related to the issue of the demandability of the local franchise tax."[35]

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[33] *Rollo*, p. 511 (Emphasis omitted).

[34] *Padlan v. Dinglasan,* 707 Phil. 83, 91 (2013) [Per *J*. Peralta, Third Division]; *Villena v. Payoyo*, 550 Phil. 686, 691 (2007) [Per *J*. Quisumbing, Second Division] citing *Huguete v. Embudo,*453 Phil. 170, 175 (2003) [Per *J*. Ynares-Santiago, First Division], citing in turn *Cañiza v. Court of Appeals,* 335 Phil. 1107, 1113 (1997) [Per *C.J*. Narvasa, Third Division], *Dela Cruz v. Court of Appeals,* 539 Phil. 158, 172 (2006) [Per *J.* Velasco, Jr., Third Division], citing *Sumulong v. Court of Appeals*, 302 Phil. 392, 408 (1994) [Per *J*. Davide, Jr., First Division] citing in turn *Feranil v. Arcilla*, 177 Phil. 712, 718 (1979) [Per *J*. De Castro, First Division].

[35] *Rollo*, p. 434.

Therefore, the dismissal of Napocor's appeal by the Court of Appeals was in order. Napocor's procedural lapse would have been sufficient to reconsider this Court's decision and instead deny the instant petition. However, the substantial merits of the case and the patent error committed by the Bataan Regional Trial Court compels this Court to exercise its power of judicial review for purposes of judicial economy.

II

"A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit."[36] In the instant case, petitioner's complaint has sought not only the nullification of the foreclosure sale but also a declaration from the trial court that it is exempt from the local franchise tax. The action began when respondent ignored petitioner's claim for exemption from franchise tax, and pursued its collection of the franchise tax delinquency by issuing the warrant of levy and conducting the sale at public auction – where the Provincial Government of Bataan was declared as purchaser – of the transmission assets, despite the purported prior mutual agreement to suspend administrative remedies for the collection of taxes. The assets were sold to enforce collection of a franchise tax delinquency **against** the petitioner. Petitioner thus had to assail the correctness of the local franchise tax assessments made against it by instituting the complaint with the Regional Trial Court; otherwise, the assessment would become conclusive and unappealable.[37] Certainly, petitioner is

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[36] RULES OF COURT, Rule 3, Sec. 2.

[37] LOCAL GOVT. CODE, Sec. 195 provides:

Section 195. *Protest of Assessment.* — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory.The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or

a real party in interest, which stands to gain or lose from the judgment that the trial court may render.

III

The main issue for the court *a quo* was a legal issue[38] on whether Napocor was liable to pay the assessed franchise tax imposed under Section 137 of Republic Act No. 7160 (the Local Government Code of 1991) by virtue of EPIRA.

Section 137 of the Local Government Code provides:

> Section 137. **Franchise Tax.** - Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.
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> In the case of a newly started business, the tax shall not exceed one-twentieth (1/20) of one percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereon, as provided herein.

Section 137 is categorical in stating that franchise tax can only be imposed on businesses enjoying a franchise. This goes

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partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer.**The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable**. (Emphasis and underscoring supplied)

[38] *Rollo*, pp. 528–530. During the pre-trial held on January 31, 2005 at the RTC, the parties agreed that the issues involved are purely questions of law, and in view thereof and upon their request, the court *a quo* directed the parties to submit their respective memorandum within thirty (30) days after which the matter is submitted for resolution.

without saying that without a franchise, a local government unit cannot impose franchise tax.

The Regional Trial Court relied heavily on the ruling in *NPC v. City of Cabanatuan*[39] in concluding that Napocor "is a commercial enterprise enjoying a franchise under Section 137 of the Local Government Code."[40] It held that Napocor was "enjoying the privilege of doing business within the territory of the Province of Bataan[;] hence, it is liable to the franchise tax."[41] The Regional Trial Court further held that Napocor was subject to franchise tax even granting the transfer of its power transmission function to TRANSCO.[42] The court *a quo* found that "no evidence was adduced showing that [Napocor] is no longer operating the [power plants in Bataan], or that it already ceased generating electricity" from it.[43]

The court *a quo*'s reliance on the ruling in *NPC v. City of Cabanatuan*[44] was misplaced. That case involved franchise taxes, which became due to the local government unit concerned prior to the passage of Republic Act No. 9136 or the EPIRA, and the issue of exemption from payment of franchise tax under EPIRA was not discussed.

Indeed, the enactment of EPIRA separated the transmission and sub-transmission functions of the state-owned Napocor from its generation function, and transferred all its transmission assets to the then newly-created TRANSCO, which was wholly owned by PSALM Corporation at that time.[45] Power generation is no longer considered a public utility operation, and companies which shall engage in power generation and supply of electricity are

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[39] 449 Phil. 233 (2003) [Per *J.* Puno, Third Division].

[40] *Rollo,* pp. 550–552.

[41] *Id.* at 552.

[42] *Id.*

[43] *Id.*

[44] 449 Phil. 233 (2003) [Per *J.* Puno, Third Division].

[45] Rep. Act No. 9136, Sec. 8.

no longer required to secure a national franchise. This is expressly provided under Section 6 of EPIRA, which reads:

> Section 6. *Generation Sector*. — Generation of electric power, a business affected with public interest, shall be competitive and open.
>
> Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.
>
> Any law to the contrary notwithstanding, *power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.*
>
> Upon implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act.
>
> Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated.
>
> The ERC shall, in determining the existence of market power abuse or anti-competitive behavior, require from generation companies the submission of their financial statements. (Emphasis supplied)

EPIRA effectively removed power generation from the ambit of local franchise taxes. Hence, as regards Napocor's business of generating electricity, the franchise taxes sought to be collected by the Provincial Government of Bataan for the latter part of 2001 up to 2003 are devoid of any statutory basis.

As regards Napocor's electric transmission function, under Section 8 of the same law, all transmission assets of Napocor were to be transferred to TRANSCO within six (6) months from

the effectivity of EPIRA,[46] or by December 26, 2001. The EPIRA Implementing Rules and Regulations further required Napocor, PSALM Corporation, and TRANSCO to –

> take such measures and execute such documents to effect the transfer of the ownership and possession of the transmission and subtransmission facilities of [Napocor] and all other assets related to transmission operations. Upon such transfer, the nationwide franchise of Napocor for the operation of the transmission system and the Grid shall transfer from Napocor to TRANSCO.[47]

Hence, until the transfer date of the transmission assets, which by express provision of EPIRA **shall not be later than December 26, 2001**, these assets, as well as the franchise, belong to and are operated by Napocor, and the latter is consequently subject to the local franchise tax.

Even so, it is quite apparent that at the time of the levy and auction of the 14 properties sometime in January 2004 and March 2004, respectively, the properties were by virtue of EPIRA already owned by TRANSCO. Thus, the foreclosure sale of the properties must be declared null and void.

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[46] Rep. Act No. 9136, Sec. 8 provides:

> Section 8. Creation of the National Transmission Company. – There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission functions of the National Power Corporation (NPC), and have the powers and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.
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> **Within six (6) months from the effectivity of this Act, the transmission and subtransmission facilities of NPC and all other assets related to transmission operations, including the nationwide franchise of NPC for the operation of the transmission system and the grid, shall be transferred to the TRANSCO. The TRANSCO shall be wholly owned by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.).** (Emphasis supplied)

[47] Implementing Rules and Regulations of Rep. Act No. 9136, Rule 22, Sec. 1.

WHEREFORE, the motion for reconsideration is **PARTIALLY GRANTED.** The decision dated April 21, 2014 insofar as it ordered the remand of the case to the Regional Trial Court is **SET ASIDE.** The foreclosure sale of the 14 properties in Limay, Bataan is hereby declared **NULL and VOID.**

SO ORDERED.

Velasco, Jr. (Chairperson), *Peralta, Bersamin,* and *Jardeleza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 197482. March 6, 2017]

FORIETRANS MANUFACTURING CORP., AGERICO CALAQUIAN and ALVIN MONTERO, *petitioners, vs.* **DAVIDOFF ET. CIE SA & JAPAN TOBACCO, INC. (represented by SYCIP SALAZAR HERNANDEZ & GATMAITAN LAW OFFICE thru ATTY. RONALD MARK LLENO),** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; DEFINED.—** Probable cause, for purposes of filing a criminal action, is defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. It does not require an inquiry into whether there is sufficient evidence to procure conviction. Only *prima facie* evidence is required or that which is, on its face, good and sufficient to establish a given fact, or the group or chain of

facts constituting the party's claim or defense; and which, if not rebutted or contradicted, will remain sufficient.

2. ID.; ID.; ID.; ID.; THE COURT HAS GENERALLY ADOPTED A POLICY OF NON-INTERFERENCE WITH THE EXECUTIVE DETERMINATION OF PROBABLE CAUSE; WHERE, HOWEVER, THERE IS A CLEAR CASE OF GRAVE ABUSE OF DISCRETION, COURTS ARE ALLOWED TO REVERSE THE SECRETARY OF JUSTICE'S FINDINGS AND CONCLUSIONS ON MATTERS OF PROBABLE CAUSE.— The task of determining probable cause is lodged with the public prosecutor and ultimately, the Secretary of Justice. Under the doctrine of separation of powers, courts have no right to directly decide matters over which full discretionary authority has been delegated to the Executive Branch of the Government. Thus, we have generally adopted a policy of non-interference with the executive determination of probable cause. Where, however, there is a clear case of grave abuse of discretion, courts are allowed to reverse the Secretary of Justice's findings and conclusions on matters of probable cause. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion is grave where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of the law. In *Unilever Philippines, Inc. v. Tan*, we have ruled that the dismissal of the complaint by the Secretary of Justice, despite ample evidence to support a finding of probable cause, clearly constitutes grave error and warrants judicial intervention and correction. Here, we find that Secretary Gonzalez committed grave abuse of discretion when he disregarded evidence on record and sustained the Joint Resolution of Prosecutor Macabulos dismissing the criminal complaints against petitioners.

3. ID.; ID.; ID.; ID.; DETERMINATION OF PROBABLE CAUSE BY THE JUDGE AND THE PROSECUTOR, DISTINGUISHED; THE PROSECUTOR HAS NO POWER OR AUTHORITY TO REVIEW THE DETERMINATION OF PROBABLE CAUSE BY THE JUDGE, JUST AS THE LATTER DOES NOT ACT AS THE APPELLATE COURT

OF THE FORMER.— [W]e find that Secretary Gonzalez should have set aside the Joint Resolution on the ground that Prosecutor Macabulos did not undertake to determine the existence or non-existence of probable cause for the *purpose of filing a criminal case*. Nowhere in the Joint Resolution is it stated that the criminal complaints were dismissed on account of lack of probable cause for the filing of a case against petitioners. Instead, Prosecutor Macabulos attacked Judge Sunga's finding of probable cause *for the issuance of search warrants* in SW Nos. 044, 045, 046, 047 and 048. x x x. The determination of probable cause by the judge should not be confused with the determination of probable cause by the prosecutor. The first is made by the judge to ascertain whether a warrant of arrest should be issued against the accused, or for purposes of this case, whether a search warrant should be issued. The second is made by the prosecutor during preliminary investigation to determine whether a criminal case should be filed in court. The prosecutor has no power or authority to review the determination of probable cause by the judge, just as the latter does not act as the appellate court of the former. Here, as correctly argued by respondents, Prosecutor Macabulos focused on the evidence submitted before Judge Sunga to support the issuance of search warrants. He lost sight of the fact that as a prosecutor, he should evaluate only the evidence presented before him during the preliminary investigation. With his preconceived notion of the invalidity of the search warrants in mind, Prosecutor Macabulos appeared to have completely ignored the evidence presented by respondents during preliminary investigation.

4. COMMERCIAL LAW; INTELLECTUAL PROPERTY CODE; INFRINGEMENT; ESSENTIAL ELEMENT; THE MOST SUCCESSFUL FORM OF COPYING IS TO EMPLOY ENOUGH POINTS OF SIMILARITY TO CONFUSE THE PUBLIC, WITH ENOUGH POINTS OF DIFFERENCE TO CONFUSE THE COURTS.—The essential element of infringement is that the infringing mark is likely to cause confusion. In this case, *the complaint-affidavit for the Davidoff infringement case alleged confusing similarity between the cigarette packs of the authentic Davidoff cigarette and the sample Dageta cigarette pack seized during the search of FMC's premises*. Respondents submitted samples of the Davidoff and Dageta cigarette packs during the preliminary investigation. They noted x x x similarities. Both Prosecutor Macabulos and

Secretary Gonzalez disregarded the x x x evidence of respondents and confined their resolutions on the finding that there is an obvious difference between the names "Davidoff" and "Dageta." Petitioners likewise rely on this finding and did not bother to refute or explain the alleged similarities in the packaging of Davidoff and Dageta cigarettes. While we agree that no confusion is created insofar as the names "Davidoff" and "Dageta" are concerned, we cannot say the same with respect to the cigarettes' packaging. Indeed there might be differences when the two are compared. We have, in previous cases, noted that defendants in cases of infringement do not normally copy but only make colorable changes. The most successful form of copying is to employ enough points of similarity to confuse the public, with enough points of difference to confuse the courts.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; THE VALIDITY AND MERITS OF A PARTY'S DEFENSE OR ACCUSATION, AS WELL AS THE ADMISSIBILITY OF TESTIMONIES AND EVIDENCE, ARE BETTER VENTILATED DURING TRIAL PROPER THAN AT THE PRELIMINARY INVESTIGATION LEVEL, AND THE PRESENCE OR ABSENCE OF THE ELEMENTS OF THE CRIME IS EVIDENTIARY IN NATURE AND A MATTER OF DEFENSE THAT MAY BE PASSED UPON ONLY AFTER A FULL-BLOWN TRIAL ON THE MERITS.— [T]he validity and merits of a party's defense or accusation, as well as the admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level. Further, the presence or absence of the elements of the crime is evidentiary in nature and a matter of defense that may be passed upon only after a full-blown trial on the merits. x x x. In this case, Secretary Gonzalez found no probable cause against petitioners for infringement of the JTI trademarks based on his conclusion that no fake Mild Seven and Mild Seven Lights were seized from FMC's premises during the raid. He already passed upon as authentic and credible the Joint Affidavit of Arrest/Seizure presented by petitioners which did not list Mild Seven and Mild Seven Lights cigarettes as among those items seized during the raid. In so doing, Secretary Gonzalez assumed the function of a trial judge, determining and weighing the evidence submitted by the parties.

6. COMMERCIAL LAW; INTELLECTUAL PROPERTY CODE; INFRINGEMENT AND FALSE DESIGNATION OF ORIGIN; FINDING OF PROBABLE CAUSE AGAINST PETITIONERS FOR TRADEMARK INFRINGEMENT AND FALSE DESIGNATION OF ORIGIN, AFFIRMED.— In dismissing the charge, Secretary Gonzalez ruled that respondents failed to establish the falsity of the claim indicated in the cigarettes' labels that they were made in Germany without providing the factual or legal basis for his conclusion. He also brushed aside the allegations that (1) machines intended for manufacturing cigarettes and (2) cigarettes' bearing the label "Made in Germany" were found and seized from FMC's warehouse in the Philippines. To our mind, however, these circumstances are enough to excite the belief that indeed petitioners were manufacturing cigarettes in their warehouse here in the Philippines but misrepresenting the cigarettes' origin to be Germany. The CA, therefore, did not err in reversing the Resolution of the Secretary of Justice. [W]e see no compelling reason to disturb the ruling of the CA finding probable cause against petitioners for trademark infringement and false designation of origin.

APPEARANCES OF COUNSEL

Garay Cruz and Associates for petitioners.
Sycip Salazar Hernandez & Gatmaitan for respondents.

D E C I S I O N

JARDELEZA, *J.*:

This is a Petition for Review on *Certiorari*[1] assailing the March 31, 2011 Decision[2] and July 5, 2011 Resolution[3] of the Court of

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[1] *Rollo*, pp. 10-41.

[2] *Id.* at 42-71. Penned by Associate Justice Florito S. Macalino with Associate Justices Juan Q. Enriquez, Jr. and Ramon M. Bato, Jr., concurring.

[3] *Id.* at 72-74.

Appeals (CA) in CA-G.R. SP No. 94587.[4] The CA reversed and set aside the February 10, 2006[5] and March 27, 2006[6] Resolutions of the Secretary of Justice which found no probable cause to charge petitioners for the crimes of infringement and false designation of origin.

I

Davidoff Et. Cie SA (Davidoff) and Japan Tobacco, Inc. (JTI) [collectively, respondents] are non-resident foreign corporations organized and existing under the laws of Switzerland and Japan, respectively.[7] They are represented in the Philippines by law firm SyCip Salazar Hernandez & Gatmaitan (SyCip Law Firm). It is authorized under a special power of attorney to maintain and prosecute legal actions against any manufacturers, local importers and/or distributors, dealers or retailers of counterfeit products bearing Davidoff's and JTI's trademarks or any products infringing their trademarks.[8] Respondents also retained Business Profiles, Inc. (BPI) as their private investigator in the Philippines.[9]

Meanwhile, petitioner Forietrans Manufacturing Corporation (FMC) is a domestic corporation with principal address at Lots 5 and 7, Angeles Industrial Park, Special Economic Zone, Barangay Calibutbut, Bacolor, Pampanga.[10]

BPI reported to respondents that "there were counterfeit Davidoff and JTI products, or products bearing colorable imitation of Davidoff and JTI products, or which are confusingly or deceivingly similar to Davidoff and JTI registered trademarks, being

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[4] The CA Decision and Resolution also disposed of CA-G.R. SP Nos. 92825 and 93788. However, this petition for review on *certiorari* specifically questions only the ruling of the CA in CA-G.R. SP No. 94587.

[5] *Rollo,* pp. 84-87. Penned by then Secretary of Justice Raul M. Gonzalez.

[6] *Id.* at 82-83.

[7] *Id.* at 44-45.

[8] *Id.* at 229-230.

[9] *Id.* at 231.

[10] *Id.* at 45.

manufactured and stored" in FMC's warehouses.[11] SyCip Law Firm then sought the assistance of the Criminal Investigation and Detection Group (CIDG) of the Philippine National Police in securing warrants to search the warehouses. Upon investigation, the CIDG confirmed the report of BPI. On August 4, 2004, PSI Joel L. De Mesa (PSI De Mesa) of the CIDG filed four separate applications for search warrant before the Regional Trial Court (RTC) of San Fernando, Pampanga. The applications were docketed as Search Warrant (SW) Case Nos. 044, 045, 046, and 047 and raffled to Branch 42 presided by Judge Pedro M. Sunga, Jr. (Judge Sunga).[12]

In the applications, PSI De Mesa alleged that "he had been informed, concluded upon investigation, and believed that [FMC] and/or its proprietors, directors, officers, employees, and/or occupants of its premises stored counterfeit cigarettes" bearing: (a) the name "DAGETA International" purported to be made in Germany; and (b) the name "DAGETA" which was confusingly similar to the Davidoff trademark, a product of Imperial Tobacco, Inc. Thus, he asked the RTC to issue search warrants authorizing any peace officer to take possession of the subject articles and bring them before the court.[13]

The RTC granted the applications. In the same afternoon of August 4, 2004, PSI Nathaniel Villegas (PSI Villegas) and PSI Eric Maniego (PSI Maniego) implemented SW Nos. 044 and 046, while PSI De Mesa implemented SW Nos. 045 and 047. During their separate raids, the CIDG teams seized several boxes containing raw tobacco, cigarettes, cigarette packs, and cigarette reams bearing the name DAGETA and DAGETA International. They also secured machineries, receptacles, other paraphernalia, sales invoices and official receipts. Petitioner Agerico Calaquian, president of FMC, was allegedly apprehended at the premises along with four Chinese nationals.[14]

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[11] *Id.* at 231.

[12] *Id.* at 45.

[13] *Id.* at 46.

[14] *Id.* at 48.

On August 5, 2004, PSI Renato Bangayan (PSI Bangayan) of the CIDG filed an application for search warrant in relation to FMC's alleged illegal manufacture, packing and distribution of counterfeit cigarettes bearing reproductions of JTI's MILD SEVEN trademark, design and general appearance.[15] On even date, SW No. 048 was issued and served, resulting in the seizure of cigarettes, cigarette packs and cigarette reams with MILD SEVEN trademark and designs. Machines used in the manufacturing of the cigarettes were also secured including sales invoices and official receipts.[16]

With the seized items as evidence, three separate Complaint-Affidavits were filed before the Office of the Provincial Prosecutor of San Fernando, Pampanga charging FMC and its employees with violation of Republic Act No. 8293, or the Intellectual Property Code of the Philippines (IP Code).[17] The charges are as follows:

1. I.S. No. OCPSF-04-H-2047[18] (Davidoff infringement case) –Infringement under Section 155 in relation to Section 170 of the IP Code for the illegal manufacture of cigarettes bearing the DAGETA label, with packaging very similar to the packaging of Davidoff's products and the script "DAGETA" on the packs being deceivingly or confusingly similar to the registered mark "DAVIDOFF."[19]

2. I.S. No. OCPSF-04-H-2048 (False Designation of Origin) – False Designation of Origin under Section 169 in relation to Section 170 of the IP Code for the illegal manufacture and/or storage of cigarettes bearing the "DAGETA" label with an indication that such cigarettes were "MADE IN GERMANY" though they were actually processed, manufactured and packaged in FMC's office in Bacolor, Pampanga.[20]

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[15] *Id.* at 49-50.

[16] *Id.* at 50.

[17] *Id.* at 54.

[18] OCPSF-04-H-2027 in some parts of the record.

[19] *Rollo*, pp. 219-221.

[20] *Id.* at 222-224.

3. I.S. No. OCPSF-04-H-2226 (JTI infringement case) – Infringement under Section 155 in relation to Section 170 of the IP Code for illegally manufacturing cigarettes which are deceivingly or confusingly similar to, or almost the same as, the registered marks of JTI, which are the "MILD SEVEN" and "MILD SEVEN LIGHTS" trademarks.[21]

Calaquian denied the charges against him and FMC. He countered that during the August 4, 2004 raid, the CIDG did not find counterfeit cigarettes within FMC's premises as nobody was there at the time. He claimed that what the CIDG found were boxes of genuine Dageta and Dageta International cigarettes imported from Germany for re-export to Taiwan and China. Calaquian asserted that FMC is an eco-zone export enterprise registered with the Philippine Economic Zone Authority (PEZA), and is duly authorized by the National Tobacco Administration to purchase, import and export tobacco. FMC would not have passed PEZA's strict rules and close monitoring if it had engaged in trademark infringement. Calaquian also denies that the CIDG made arrests on the occasion of the raid.[22]

In a Joint Resolution[23] dated September 12, 2005, Second Assistant Provincial Prosecutor Otto B. Macabulos (Prosecutor Macabulos) dismissed the criminal complaints. Prosecutor Macabulos found the affidavit of Jimmy Trocio (Trocio), the informant/witness presented by PSI De Mesa in his application for search warrants, clearly insufficient to show probable cause to search FMC's premises for fake JTI or Davidoff products. Trocio did not even testify that FMC is manufacturing fake Dageta cigarettes. The CIDG also did not find Dageta cigarettes during the raid, much less fake JTI or Davidoff products. This should have been reason enough to quash the warrant.[24] Further, Prosecutor Macabulos held that there is no confusing similarity between the

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[21] *Id.* at 225-228.

[22] *Id.* at 86.

[23] *Id.* at 75-81.

[24] *Id.* at 77.

Dageta and Davidoff brands. Thus, he found the complaints for the Davidoff infringement and False Designation of Origin to be without merit.[25]

Prosecutor Macabulos also expressed disbelief over the allegation that Mild Seven and Mild Seven Lights were seized at FMC's premises. He averred that the Joint Affidavit of Arrest/ Seizure dated August 6, 2004 never mentioned those cigarettes as among the items seized. Furthermore, there was no proof that FMC manufactured fake Mild Seven cigarettes.[26] Hence, he also dismissed the JTI infringement case.

Respondents thereafter filed a Petition for Review before then Secretary of Justice Raul M. Gonzalez (Secretary Gonzalez).

In his Resolution dated February 10, 2006, Secretary Gonzalez affirmed the ruling of Prosecutor Macabulos. He opined that the seizure of Dageta and Dageta International cigarettes from FMC's premises does not prove the commission of trademark infringement and false designation of origin. It cannot be said that there is confusing similarity between Davidoff cigarettes, and Dageta and Dageta International cigarettes. The difference in their names alone belies the alleged confusing similarity.[27]

Secretary Gonzalez also affirmed the dismissal of the charge of false designation of origin. He ruled that respondents failed to establish the falsity of the claim indicated in the labels of Dageta and Dageta International cigarettes that they were made in Germany.[28]

In addition, Secretary Gonzalez declared that the alleged discovery and seizure of Mild Seven and Mild Seven Lights in FMC's premises during the August 4 and 5, 2004 raids did not actually happen. He agreed with Calaquian that if indeed the officers

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[25] *Id.* at 78.

[26] *Id.* at 80.

[27] *Id.* at 87.

[28] *Id.*

and employees of FMC were found manufacturing or assisting or supervising the manufacture of Mild Seven and Mild Seven Lights during the raids, surely the raiding team would have arrested them then and there; but as it was, no arrest was apparently made. Secretary Gonzalez also agreed with Prosecutor Macabulos' observation that Mild Seven and Mild Seven Lights cigarettes were never mentioned among the items seized in the Joint Affidavit of Arrest/Seizure.[29]

Respondents moved for reconsideration. This, however, was denied with finality by Secretary Gonzalez in his Resolution dated March 27, 2006. Respondents elevated the case to the CA via a petition for *certiorari*.[30]

The CA reversed the resolutions of Secretary Gonzalez. It adjudged that Secretary Gonzalez acted with grave abuse of discretion in affirming Prosecutor Macabulos' finding that no probable cause exists against FMC. The CA explained that Secretary Gonzalez assumed the function of the trial judge of calibrating the evidence on record when he ruled that:

a. The seizure of Mild Seven and Mild Seven Lights during the raid did not happen as the arresting officer failed to state in their Joint Affidavit that they seized the said cigarettes and if it were true that they seized these cigarettes, the raiding team would have arrested Mr. Calaquian and four Chinese nationals present during the raid; and

b. The seizure of Dageta and Dageta International cigarettes does not prove that FMC violated the provisions on infringement of trademark and false designation of origin under the IP Code.[31]

According to the CA, the foregoing involve evidentiary matters which can be better resolved in the course of the trial, and Secretary

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[29] *Rollo*, p. 86.

[30] *Id.* at 229-251.

[31] *Id.* at 69-70.

Gonzalez was not in a competent position to pass judgment on substantive matters.[32] Petitioners filed a partial motion for reconsideration, but this was denied by the CA. Hence, this petition.

Petitioners fault the CA for interfering with the valid exercise by Prosecutor Macabulos and Secretary Gonzalez of the executive power to determine the existence or non-existence of probable cause in a preliminary investigation.[33] Heavily relying on the Joint Resolution issued by Prosecutor Macabulos, they allege that respondents did not present any proof to show probable cause to indict them for the crimes of infringement and false designation of origin.[34] They contend that Secretary Gonzalez affirmed the Joint Resolution and dismissed the criminal complaints based on insufficiency of evidence since there was no proof that FMC manufactured counterfeit Davidoff or Mild Seven cigarettes. Petitioners also insist that no court can order the prosecution of a person against whom the prosecutor does not find sufficient evidence to support at least a *prima facie* case.[35]

In their Comment, respondents counter that the petition should be dismissed for failure to show any special and important reason for this Court to exercise its power of review. They claim that the petition is a mere rehash of FMC's arguments before the CA.[36] In any case, respondents aver that the CA correctly reversed the Resolutions of Secretary Gonzalez. Secretary Gonzalez acted without or in excess of jurisdiction and with grave abuse of discretion when he completely disregarded the evidence attached to the criminal complaints and wrongfully assumed the function of a trial judge in passing upon factual or evidentiary matters which are best decided after a full-blown trial on the merits.[37]

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[32] *Id.* at 70.

[33] *Id.* at 29.

[34] *Id.* at 32-33.

[35] *Id.* at 31.

[36] *Id.* at 313.

[37] *Id.* at 314.

We are now asked to resolve whether the CA erred in ruling that Secretary Gonzalez committed grave abuse of discretion in finding no probable cause to charge petitioners with trademark infringement and false designation of origin.

II

We deny the petition.

Probable cause, for purposes of filing a criminal action, is defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof.[38] It does not require an inquiry into whether there is sufficient evidence to procure conviction. Only *prima facie* evidence is required or that which is, on its face, good and sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense; and which, if not rebutted or contradicted, will remain sufficient.[39]

The task of determining probable cause is lodged with the public prosecutor and ultimately, the Secretary of Justice. Under the doctrine of separation of powers, courts have no right to directly decide matters over which full discretionary authority has been delegated to the Executive Branch of the Government. Thus, we have generally adopted a policy of non-interference with the executive determination of probable cause.[40] Where, however, there is a clear case of grave abuse of discretion, courts are allowed to reverse the Secretary of Justice's findings and conclusions on matters of probable cause.[41]

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[38] *Sy v. Secretary of Justice*, G.R. No. 166315, December 14, 2006, 511 SCRA 92, 96, citing *Sarigumba v. Sandiganbayan*, G.R. Nos. 154239-41, February 16, 2005, 451 SCRA 533, 550.

[39] *Miller v. Perez*, G.R. No. 165412, May 30, 2011, 649 SCRA 158, 180.

[40] *Metropolitan Bank & Trust Co. (Metrobank) v. Tobias III*, G.R. No. 177780, January 25, 2012, 664 SCRA 165, 176-177.

[41] See *United Coconut Planters Bank v. Looyuko*, G.R. No. 156337, September 28, 2007, 534 SCRA 322, 330-331, citing *First Women's Credit Corporation v. Perez*, G.R. No. 169026, June 15, 2006, 490 SCRA 774, 777.

By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion is grave where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of the law.[42]

In *Unilever Philippines, Inc. v. Tan,* we have ruled that the dismissal of the complaint by the Secretary of Justice, despite ample evidence to support a finding of probable cause, clearly constitutes grave error and warrants judicial intervention and correction.[43]

Here, we find that Secretary Gonzalez committed grave abuse of discretion when he disregarded evidence on record and sustained the Joint Resolution of Prosecutor Macabulos dismissing the criminal complaints against petitioners.

A

Preliminarily, we find that Secretary Gonzalez should have set aside the Joint Resolution on the ground that Prosecutor Macabulos did not undertake to determine the existence or non-existence of probable cause for the *purpose of filing a criminal case*. Nowhere in the Joint Resolution is it stated that the criminal complaints were dismissed on account of lack of probable cause for the filing of a case against petitioners. Instead, Prosecutor Macabulos attacked Judge Sunga's finding of probable cause *for the issuance of search warrants* in SW Nos. 044, 045, 046, 047 and 048. The pertinent portions of the Joint Resolution read:

As can be seen supra, Trocio's affidavit was **clearly insufficient to show probable cause to search** FMC's premises and look for fake JTI or [Davidoff] products.

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[42] *United Coconut Planters Bank v. Looyuko*, *supra* at 331, citing *Rimbunan Hijau Group of Companies v. Oriental Wood Processing Corporation*, G.R. No. 152228, September 23, 2005, 470 SCRA 650, 661.

[43] G.R. No. 179367, January 29, 2014, 715 SCRA 36, 51. See also, *Miller v. Secretary Perez*, *supra* at 181; and *Sy v. Secretary of Justice*, *supra* at 99.

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It would seem that reason had taken leave of the senses. The undeniable fact, standing out like a sore thumb, is that the **applicants never presented a single shred of proof to show probable cause for the issuance of a search warrant.** It would have been laughable if not for the fact that persons were arrested and detained and properties were confiscated.

As can be seen, what began as a search for fake JTI and [Davidoff] products changed into a search for fake Dageta International cigarettes, then shifted to a sea[r]ch for fake Dageta cigarettes confusingly similar to Davidoff and finally shifted to fake mislabeled Dageta cigarettes. **One can only wonder why the applications were granted without a shred of proof showing probable cause**. The exception against unreasonable searches and seizures became the very weapon to commit abuses that the provision was designed to prevent.[44] (Emphasis supplied.)

The determination of probable cause by the judge should not be confused with the determination of probable cause by the prosecutor. The first is made by the judge to ascertain whether a warrant of arrest should be issued against the accused, or for purposes of this case, whether a search warrant should be issued. The second is made by the prosecutor during preliminary investigation to determine whether a criminal case should be filed in court. The prosecutor has no power or authority to review the determination of probable cause by the judge, just as the latter does not act as the appellate court of the former.[45] Here, as correctly argued by respondents, Prosecutor Macabulos focused on the evidence submitted before Judge Sunga to support the issuance of search warrants.[46] He lost sight of the fact that as a prosecutor, he should evaluate only the evidence presented before him during the preliminary investigation. With his preconceived notion of the invalidity of the search warrants in mind, Prosecutor Macabulos appeared to have completely ignored the evidence presented by respondents during preliminary investigation.

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[44] *Rollo*, pp. 77-78.

[45] See *Mendoza v. People*, G.R. No. 197293, April 21, 2014, 722 SCRA 647, 656.

[46] *Rollo*, p. 279.

B

The records show that a *prima facie* case for trademark infringement and false designation of origin exists against petitioners. Section 155 of the IP Code enumerates the instances when infringement is committed, *viz.*:

Sec. 155. *Remedies; Infringement*. – Any person who shall, without the consent of the owner of the registered mark:

155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

155.2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: Provided, That the infringement takes place at the moment any of the acts stated in Subsection 155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material.

The essential element of infringement is that the infringing mark is likely to cause confusion.[47] In this case, *the complaint-affidavit for the Davidoff infringement case alleged confusing similarity between the cigarette packs of the authentic Davidoff cigarette and the sample Dageta cigarette pack seized during the search of FMC's premises*. Respondents submitted samples of the Davidoff and Dageta cigarette packs during the preliminary investigation. They noted the following similarities:[48]

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[47] *Skechers, U.S.A., Inc. v. Inter Pacific Industrial Trading Corp*., G.R. No. 164321, March 28, 2011, 646 SCRA 448, 455.

[48] *Rollo*, pp. 219-228; 236-237.

Davidoff (Exhibit 1)	Dageta (Exhibit 2)
Octagonal designed pack	Octagonal designed pack
Black and red covering	Black and red covering
Silver coloring of the tear tape and printing	Silver coloring of the tear tape and printing
"Made in Germany by Reemtsman under license of Davidoff & CIE SA, Geneva"	"Made in Germany under license of DAGETA & Tobacco LT"
Manufacturing Code imprinted on the base of the pack	Manufacturing Code imprinted on the base of the pack
Writing at the back says: "These carefully selected tobaccos have been skillfully blended to assure your pleasure" with the signature of Zino Davidoff	Writing at the back says: "These specifically selected tobaccos have been professionally blended to ensure highest quality" with Chinese letters underneath the name Dageta

Both Prosecutor Macabulos and Secretary Gonzalez disregarded the foregoing evidence of respondents and confined their resolutions on the finding that there is an obvious difference between the names "Davidoff" and "Dageta." Petitioners likewise rely on this finding and did not bother to refute or explain the alleged similarities in the packaging of Davidoff and Dageta cigarettes. While we agree that no confusion is created insofar as the names "Davidoff" and "Dageta" are concerned, we cannot say the same with respect to the cigarettes' packaging. Indeed there might be differences when the two are compared. We have, in previous cases, noted that defendants in cases of infringement do not normally copy but only make colorable changes. The most successful form of copying is to employ enough points of similarity to confuse the public, with enough points of difference to confuse the courts.[49]

Similarly, in their Complaint-Affidavit in the JTI infringement case, respondents aver that JTI is the registered owner of the Mild

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[49] *Del Monte Corporation v. Court of Appeals*, G.R. No. 78325, January 25, 1990, 181 SCRA 140, 418-419.

Seven and Mild Seven Lights trademarks; and that *FMC manufactures cigarettes deceivingly or confusingly similar to, or almost the same as, the registered marks of JTI.* They asserted that FMC is not authorized to manufacture, pack, distribute or otherwise deal in products using JTI's trademarks. Respondents also submitted authentic Mild Seven and Mild Seven Lights cigarettes and samples of the cigarettes taken from FMC's premises.[50]

When Secretary Gonzalez dismissed respondents' complaint, he made a *factual* determination that no Mild Seven and Mild Seven Lights were actually seized from FMC's premises. He cited Prosecutor Macabulos' observation that the Joint Affidavit of Arrest/ Seizure dated August 6, 2004 never mentioned the foregoing cigarettes as among the items seized. The CA, on the other hand, reversed the dismissal of the complaint and declared that the issue of whether or not there was an actual seizure of Mild Seven and Mild Seven Lights during the raid is evidentiary in character.

We concur with the CA. The validity and merits of a party's defense or accusation, as well as the admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level.[51] Further, the presence or absence of the elements of the crime is evidentiary in nature and a matter of defense that may be passed upon only after a full-blown trial on the merits.[52]

In *Metropolitan Bank & Trust Co. v. Gonzales,*[53] we ruled that:

x x x **[T]he abuse of discretion is patent in the act of the Secretary of Justice holding that the contractual relationship forged by the parties was a simple loan, for in so doing, the Secretary of Justice**

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[50] *Rollo*, pp. 225-227.

[51] *Unilever Philippines, Inc. v. Tan*, *supra* note 43 at 48-49, citing *Lee v. KBC Bank N.V.*, G.R. No. 164673, January 15, 2010, 610 SCRA 117.

[52] *Clay & Feather International, Inc. v. Lichaytoo*, G.R. No. 193105, May 30, 2011, 649 SCRA 516, 526, citing *Andres v. Cuevas*, G.R. No. 150869, June 9, 2005, 460 SCRA 38, 52.

[53] G.R. No. 180165, April 7, 2009, 584 SCRA 631.

assumed the function of the trial judge of calibrating the evidence on record, done only after a full-blown trial on the merits. The fact of existence or non-existence of a trust receipt transaction is evidentiary in nature, the veracity of which can best be passed upon after trial on the merits, for it is virtually impossible to ascertain the real nature of the transaction involved based solely on the self-serving allegations contained in the opposing parties' pleadings. **Clearly, the Secretary of Justice is not in a competent position to pass judgment on substantive matters. The bases of a part[ie]'s accusation and defenses are better ventilated at the trial proper than at the preliminary investigation.**[54] (Emphasis supplied.)

In this case, Secretary Gonzalez found no probable cause against petitioners for infringement of the JTI trademarks based on his conclusion that no fake Mild Seven and Mild Seven Lights were seized from FMC's premises during the raid. He already passed upon as authentic and credible the Joint Affidavit of Arrest/Seizure presented by petitioners which did not list Mild Seven and Mild Seven Lights cigarettes as among those items seized during the raid. In so doing, Secretary Gonzalez assumed the function of a trial judge, determining and weighing the evidence submitted by the parties.

Meanwhile, the Complaint-Affidavit in the JTI infringement case shows that, more likely than not, petitioners have committed the offense charged. FMC, alleged to be without authority to deal with JTI products, is claimed to have been manufacturing cigarettes that have almost the same appearance as JTI's Mild Seven and Mild Seven Lights cigarettes.

As to the crime of False Designation of Origin, Section 169 of the IP Code provides:

Sec. 169. *False Designations of Origin; False Description or Representation.* –

169.1. Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which:

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[54] *Id.* at 642.

(a) Is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person; or

(b) In commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable to a civil action for damages and injunction provided in Sections 156 and 157 of this Act by any person who believes that he or she is or is likely to be damaged by such act.

x x x x x x x x x

Respondents alleged in their Complaint-Affidavit that petitioners illegally manufactured and/or stored cigarettes bearing the "DAGETA" label with an indication that these cigarettes were made in Germany even if they were actually processed, manufactured and packed in the premises of FMC. To support their claim, respondents submitted samples and attached a copy of the receipt/inventory of the items seized during the August 4, 2004 raid. These included cigarettes bearing the infringing DAGETA trademark and various machineries, receptacles, boxes and other paraphernalia used in the manufacturing and packing of the infringing products.[55]

Petitioners, for their part, disputed respondents' claim and maintained that the items seized from their warehouse were genuine Dageta and Dageta International cigarettes imported from Germany. In dismissing the charge, Secretary Gonzalez ruled that respondents failed to establish the falsity of the claim indicated in the cigarettes' labels that they were made in Germany without providing the factual or legal basis for his conclusion. He also brushed aside the allegations that (1) machines intended for manufacturing cigarettes and (2) cigarettes' bearing the label "Made in Germany" were found and seized from FMC's warehouse in the Philippines. To our mind, however, these circumstances are enough to excite the belief that indeed petitioners were manufacturing cigarettes in their warehouse

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[55] *Rollo,* p. 223.

here in the Philippines but misrepresenting the cigarettes' origin to be Germany. The CA, therefore, did not err in reversing the Resolution of the Secretary of Justice.

In fine, we see no compelling reason to disturb the ruling of the CA finding probable cause against petitioners for trademark infringement and false designation of origin.

WHEREFORE, the petition is **DENIED** for lack of merit. The Decision dated March 31, 2011 and Resolution dated July 5, 2011 of the Court of Appeals in CA-G.R. SP No. 94587 are **AFFIRMED**. The Provincial Prosecutor of Pampanga is thus **DIRECTED** to file Informations against petitioners for violations of:

(a) Section 155 (Infringement), in relation to Section 170 of the IP Code in I.S. No. OCPSF-04-H-2047;

(b) Section 169 (False Designation of Origin), in relation to Section 170 of the IP Code in I.S. No. OCPSF-04-H-2048; and

(c) Section 155 (Infringement), in relation to Section 170 of the IP Code in I.S. No. OCPSF-04-H-2226.

SO ORDERED.

Velasco, Jr. (Chairperson), *Bersamin,* and *Caguioa,*[*] *JJ.,* concur.

Reyes, J., on official leave.

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[*] Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

SECOND DIVISION

[G.R. No. 197899. March 6, 2017]

JOAQUIN LU, *petitioner, vs.* **TIRSO ENOPIA, ROBERTO ABANES, ALEJANDRE BAGAS, SALVADOR BERNAL, SAMUEL CAHAYAG, ALEJANDRO CAMPUGAN, RUPERTO CERNA, JR., REYNALDO CERNA, PETER CERVANTES, LEONARDO CONDESTABLE, ROLANDO ESLOPOR, ROLLY FERNANDEZ, EDDIE FLORES, ROLANDO FLORES, JUDITO FUDOLIN, LEO GRAPANI, FELIX HUBAHIB, JERRY JUAGPAO, MARCIANO LANUTAN, JOVENTINO MATOBATO, ALFREDO MONIVA, VICTORIANO ORTIZ, JR., RENALDO PIALAN, ALFREDO PRUCIA, PONCIANO REANDO, HERMENIO REMEGIO, DEMETRIO RUAYA, EDGARDO RUSIANA, NESTOR SALILI, VICENTE SASTRELLAS, ROMEO SUMAYANG, and DESIDERIO TABAY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; COURT OF APPEALS; THE JUDICIAL FUNCTION OF THE COURT OF APPEALS (CA) IN THE EXERCISE OF ITS *CERTIORARI* JURISDICTION OVER THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) EXTENDS TO THE CAREFUL REVIEW OF THE NLRC'S EVALUATION OF THE EVIDENCE BECAUSE THE FACTUAL FINDINGS OF THE NLRC ARE ACCORDED GREAT RESPECT AND FINALITY ONLY WHEN THEY REST ON SUBSTANTIAL EVIDENCE.— [T]he LA's factual findings was affirmed by the NLRC, however, the CA found that the latter's resolution did not critically examine the facts and rationally assess the evidence on hand, and thus found that the NLRC gravely abused its discretion when it sustained the LA's decision dismissing respondents' complaint for illegal dismissal on the ground of lack of merit. The judicial function of the CA in the exercise

of its *certiorari* jurisdiction over the NLRC extends to the careful review of the NLRC's evaluation of the evidence because the factual findings of the NLRC are accorded great respect and finality only when they rest on substantial evidence. Accordingly, the CA is not to be restrained from revising or correcting such factual findings whenever warranted by the circumstances simply because the NLRC is not infallible. Indeed, to deny to the CA this power is to diminish its corrective jurisdiction through the writ of *certiorari*.

2. ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP IS A QUESTION OF FACT, AND THE COURT GENERALLY DOES NOT REVIEW ERRORS THAT RAISE FACTUAL QUESTIONS; EXCEPTION.— [W]e reiterate the doctrine that the existence of an employer-employee relationship is ultimately a question of fact. Generally, We do not review errors that raise factual questions. However, when there is a conflict among the factual findings of the antecedent deciding bodies like the LA, the NLRC and the CA, it is proper, in the exercise of Our equity jurisdiction, to review and re-evaluate the factual issues and to look into the records of the case and re-examine the questioned findings. In dealing with factual issues in labor cases, substantial evidence or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion is sufficient.

3. LABOR AND SOCIAL LEGISLATION; THE LABOR CODE; EMPLOYMENT; EMPLOYER-EMPLOYEE RELATIONSHIP; ELEMENTS; PRESENT.— In determining the existence of an employer-employee relationship, the following elements are considered: (1) the selection and engagement of the workers; (2) the power to control the worker's conduct; (3) the payment of wages by whatever means; and (4) the power of dismissal. We find all these elements present in this case.

4. ID.; ID.; ID.; ID.; NO PARTICULAR FORM OF EVIDENCE IS REQUIRED TO PROVE THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP, AS ANY COMPETENT AND RELEVANT EVIDENCE TO PROVE THE RELATIONSHIP MAY BE ADMITTED.— It is settled that no particular form of evidence is required to prove the existence of an employer-employee relationship. Any competent

and relevant evidence to prove the relationship may be admitted. In this case, petitioner contends that it was the *piado* who hired respondents, however, it was shown by the latter's evidence that the employer stated in their Social Security System (*SSS*) online inquiry system printouts was MGTR, which is owned by petitioner. We have gone over these printouts and found that the date of the SSS remitted contributions coincided with the date of respondents' employment with petitioner. Petitioner failed to rebut such evidence. Thus, the fact that petitioner had registered the respondents with SSS is proof that they were indeed his employees. The coverage of the Social Security Law is predicated on the existence of an employer-employee relationship.

5. **ID.; ID.; ID.; ID.; CONTROL TEST; MERELY CALLS FOR THE EXISTENCE OF THE RIGHT TO CONTROL, AND NOT NECESSARILY THE EXERCISE THEREOF; IT IS NOT ESSENTIAL THAT THE EMPLOYER ACTUALLY SUPERVISES THE PERFORMANCE OF DUTIES BY THE EMPLOYEE, FOR IT IS ENOUGH THAT THE FORMER HAS A RIGHT TO WIELD THE POWER.—** It was established that petitioner exercised control over respondents. It should be remembered that the control test merely calls for the existence of the right to control, and not necessarily the exercise thereof. It is not essential that the employer actually supervises the performance of duties by the employee. It is enough that the former has a right to wield the power. Petitioner admitted in his pleadings that he had contact with respondents at sea via the former's radio operator and their checker. He claimed that the use of the radio was only for the purpose of receiving requisitions for the needs of the fishermen in the high seas and to receive reports of fish catch so that they can then send service boats to haul the same. However, such communication would establish that he was constantly monitoring or checking the progress of respondents' fishing operations throughout the duration thereof, which showed their control and supervision over respondents' activities.

6. **ID.; ID.; ID.; ID.; THE PAYMENT OF WAGES BASED ON THE PERCENTAGE SHARE OF THE FISH CATCH IS NOT SUFFICIENT TO NEGATE THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN**

THE PARTIES.— The payment of respondents' wages based on the percentage share of the fish catch would not be sufficient to negate the employer-employee relationship existing between them. As held in *Ruga v. NLRC*: x x x [I]t must be noted that petitioners received compensation on a percentage commission based on the gross sale of the fish-catch, *i.e.*, 13% of the proceeds of the sale if the total proceeds exceeded the cost of the crude oil consumed during the fishing trip, otherwise, only 10% of the proceeds of the sale. Such compensation falls within the scope and meaning of the term "wage" as defined under Article 97(f) of the Labor Code.

7. ID.; ID.; ID.; ID.; THE PRIMARY STANDARD FOR DETERMINING REGULAR EMPLOYMENT IS THE REASONABLE CONNECTION BETWEEN THE PARTICULAR ACTIVITY PERFORMED BY THE EMPLOYEE IN RELATION TO THE USUAL TRADE OR BUSINESS OF THE EMPLOYER.— The primary standard for determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual trade or business of the employer. Respondents' jobs as fishermen-crew members of F/B MG 28 were directly related and necessary to petitioner's deep-sea fishing business and they had been performing their job for more than one year. We quote with approval what the CA said, to wit: Indeed, it is not difficult to see the direct linkage or causal connection between the nature of petitioners' (now respondents) work *vis-a-vis* MGTR's line of business. In fact, MGTR's line of business could not possibly exist, let alone flourish without people like the fishermen crew members of its fishing vessels who actually undertook the fishing activities in the high seas. Petitioners' services to MGTR are so indispensable and necessary that without them MGTR's deep-sea fishing industry would not have come to existence, much less fruition. x x x.

8. ID.; ID.; TERMINATION OF EMPLOYMENT; REGULAR EMPLOYEES ARE ENTITLED TO SECURITY OF TENURE WHICH GUARANTEES THE RIGHT OF EMPLOYEES TO CONTINUE IN THEIR EMPLOYMENT ABSENT A JUST OR AUTHORIZED CAUSE FOR TERMINATION.— As respondents were petitioner's regular employees, they are

entitled to security of tenure under Section 3, Article XIII of the 1987 Constitution. It is also provided under Article 279 of the Labor Code, that the right to security of tenure guarantees the right of employees to continue in their employment absent a just or authorized cause for termination. Considering that respondents were petitioner's regular employees, the latter's act of asking them to sign the joint fishing venture agreement which provides that the venture shall be for a period of one year from the date of the agreement, subject to renewal upon mutual agreement of the parties, and may be pre-terminated by any of the parties before the expiration of the one-year period, is violative of the former's security of tenure. And respondents' termination based on their refusal to sign the same, not being shown to be one of those just causes for termination under Article 282, is, therefore, illegal.

9. ID.; ID.; ID.; ILLEGAL DISMISSAL; AN EMPLOYEE WHO IS UNJUSTLY DISMISSED FROM WORK SHALL BE ENTITLED TO REINSTATEMENT WITHOUT LOSS OF SENIORITY RIGHTS AND OTHER PRIVILEGES AND TO HIS FULL BACKWAGES, INCLUSIVE OF ALLOWANCES, AND TO HIS OTHER BENEFITS OR THEIR MONETARY EQUIVALENT COMPUTED FROM THE TIME HIS COMPENSATION WAS WITHHELD FROM HIM UP TO THE TIME OF HIS ACTUAL REINSTATEMENT; PAYMENT OF SEPARATION PAY PROPER WHERE REINSTATEMENT IS NO LONGER VIABLE.— An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. Respondents who were unjustly dismissed from work are entitled to reinstatement and backwages, among others. However, We agree with the CA that since most (if not all) of the respondents are already employed in different deep-sea fishing companies, and considering the strained relations between MGTR and the respondents, reinstatement is no longer viable. Thus, the CA correctly ordered the payment to each respondent his separation pay equivalent to one month for every year of service reckoned from the time he was hired as fishermen-crew member of F/B MG-28 by MGTR until the finality of this

judgment. The CA correctly found that respondents are entitled to the payment of backwages from the time they were dismissed until the finality of this decision.

10. CIVIL LAW; CIVIL CODE OF THE PHILIPPINES; OBLIGATIONS AND CONTRACTS; DAMAGES; AWARD OF EXEMPLARY DAMAGES, ATTORNEY'S FEES AND LEGAL INTEREST, AFFIRMED.— The CA's award of exemplary damages to each respondent is likewise affirmed. Exemplary damages are granted by way of example or correction for the public good if the employer acted in a wanton, fraudulent, reckless, oppressive or malevolent manners. We also agree with the CA that respondents are entitled to attorney's fees in the amount of 10% of the total monetary award. It is settled that where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable. The legal interest shall be imposed on the monetary awards herein granted at the rate of six percent (6%) *per annum* from the finality of this judgment until fully paid.

11. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; A COURT MAY GRANT RELIEF TO A PARTY EVEN IF THE PARTY AWARDED DID NOT PRAY FOR IT IN HIS PLEADINGS.— Petitioner's contention that there is no justification to incorporate in the CA decision the immediate execution pending appeal of its decision is not persuasive. The petition for *certiorari* filed with the CA contained a general prayer for such other relief and remedies just and equitable under the premises. And this general prayer is broad enough to justify extension of a remedy different from or together with the specific remedy sought. Indeed, a court may grant relief to a party, even if the party awarded did not pray for it in his pleadings.

APPEARANCES OF COUNSEL

Law Firm of Miguel Baliao & Associates for petitioner.
Emilio O. Quianzon, Jr. for respondents.

D E C I S I O N

PERALTA, *J.*:

Before us is a petition for review on *certiorari* filed by Joaquin Lu which seeks to reverse and set aside the Decision[1] dated October 22, 2010 and the Resolution[2] dated May 12, 2011, respectively, of the Court of Appeals issued in CA-G.R. SP No. 55486-MIN.

The facts of the case, as stated by the Court of Appeals, are as follows:

> Petitioners (now herein respondents) were hired from January 20, 1994 to March 20, 1996 as crew members of the fishing mother boat F/B MG-28 owned by respondent Joaquin "Jake" Lu (herein petitioner Lu) who is the sole proprietor of Mommy Gina Tuna Resources [MGTR] based in General Santos City. Petitioners and Lu had an income-sharing arrangement wherein 55% goes to Lu, 45% to the crew members, with an additional 4% as "backing incentive." They also equally share the expenses for the maintenance and repair of the mother boat, and for the purchase of nets, ropes and *payaos*.
>
> Sometime in August 1997, Lu proposed the signing of a Joint Venture Fishing Agreement between them, but petitioners refused to sign the same as they opposed the one-year term provided in the agreement. According to petitioners, during their dialogue on August 18, 1997, Lu terminated their services right there and then because of their refusal to sign the agreement. On the other hand, Lu alleged that the master fisherman (*piado*) Ruben Salili informed him that petitioners still refused to sign the agreement and have decided to return the vessel F/B MG-28.
>
> On August 25, 1997, petitioners filed their complaint for illegal dismissal, monetary claims and damages. Despite serious efforts made by Labor Arbiter (LA) Arturo P. Aponesto, the case was not amicably

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[1] Penned by Associate Justice Leoncia R. Dimagiba, with Associate Justices Edgardo A. Camello and Nina G. Antonio-Valenzuela, concurring; *rollo*, pp. 38-59.

[2] Per Associate Justice Edgardo A. Camello, with Associate Justices Edgardo T. Lloren and Melchor Quirino C. Sadang, concurring; *id*. at 76-79.

settled, except for the following matters: (1) *Balansi* 8 and 9; (2) 10% *piado* share; (3) *sud-anon* refund; and (4) refund of payment of motorcycle in the amount of ₱15,000.00. LA Aponesto further inhibited himself from the case out of "delicadeza," and the case was raffled to LA Amado M. Solamo.

In their Position Paper, petitioners alleged that their refusal to sign the Joint Venture Fishing Agreement is not a just cause for their termination. Petitioners also asked for a refund of the amount of ₱8,700,407.70 that was taken out of their 50% income share for the repair and maintenance of boat as well as the purchase of fishing materials, as Lu should not benefit from such deduction.

On the other hand, Lu denied having dismissed petitioners, claiming that their relationship was one of joint venture where he provided the vessel and other fishing paraphernalia, while petitioners, as industrial partners, provided labor by fishing in the high seas. Lu alleged that there was no employer-employee relationship as its elements were not present, viz.: it was the *piado* who hired petitioners; they were not paid wages but shares in the catch, which they themselves determine; they were not subject to his discipline; and respondent had no control over the day-to-day fishing operations, although they stayed in contact through respondent's radio operator or checker. Lu also claimed that petitioners should not be reimbursed for their share in the expenses since it was their joint venture that shouldered these expenses.[3]

On June 30, 1998, the LA rendered a Decision[4] dismissing the case for lack of merit finding that there was no employer-employee relationship existing between petitioner and the respondents but a joint venture.

In so ruling, the LA found that: (1) respondents were not hired by petitioner as the hiring was done by the *piado* or master fisherman; (2) the earnings of the fishermen from the labor were in the form of wages they earned based on their respective shares; (3) they were never disciplined nor sanctioned by the petitioner; and, (4) the income-sharing and expense-splitting

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[3] *Id*. at 40-42.

[4] Per LA Amado M. Solamo; *id*. at 82-87; Docketed as Case Nos. RAB-11-08-50294-97 and RAB-11-08-50296-97.

was no doubt a working set up in the nature of an industrial partnership. While petitioner issued memos, orders and directions, however, those who were related more on the aspect of management and supervision of activities after the actual work was already done for purposes of order in hauling and sorting of fishes, and thus, not in the nature of control as to the means and method by which the actual fishing operations were conducted as the same was left to the hands of the master fisherman.

The LA also ruled that the checker and the use of radio were for the purpose of monitoring and supplying the logistics requirements of the fishermen while in the sea; and that the checkers were also tasked to monitor the recording of catches and ensure that the proper sharing system was implemented; thus, all these did not mean supervision on how, when and where to fish.

Respondents appealed to the National Labor Relations Commission (*NLRC*), which affirmed the LA Decision in its Resolution[5] dated March 12, 1999. Respondents' motion for reconsideration was denied in a Resolution[6] dated July 9, 1999.

Respondents filed a petition for *certiorari* with the CA which dismissed[7] the same for having been filed beyond the 60-day reglementary period as provided under Rule 65 of the Rules of Court, and that the sworn certification of non-forum shopping was signed only by two (2) of the respondents who had not shown any authority to sign in behalf of the other respondents. As their motion for reconsideration was denied, they went to Us via a petition for *certiorari* assailing the dismissal which We granted in a Resolution[8] dated July 31, 2006 and remanded the case to the CA for further proceedings.

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[5] Per Commissioner Oscar N. Abella, concurred in by Presiding Commissioner Salic B. Dumarpa and Commissioner Leon G. Gonzaga, Jr.; *id*. at 89-97; docketed as NLRC CA No. M-004368-98.

[6] *Id*. at 99-100.

[7] CA *rollo*, pp. 374-375; docketed as CA-G.R. SP No. 55486.

[8] G.R. No. 147396.

Petitioner filed its Comment to the petition. The parties submitted their respective memoranda as required by the CA.

On October 22, 2010, the CA rendered its assailed Decision reversing the NLRC, the decretal portion of which reads as follows:

> WHEREFORE, premises considered, the assailed March 12, 1999 Resolution of public respondent National Labor Relations Commission (NLRC), Fifth Division, Cagayan de Oro City, is hereby REVERSED and SET ASIDE, and a new one is entered.
>
> Thus, private respondent Mommy Gina Tuna Resources (MGTR) thru its sole proprietor/general manager, Joaquin T. Lu (Lu), is hereby ORDERED to pay each of the petitioners, namely, TIRSO ENOPIA, ROBERTO ABANES, ALEJANDRE BAGAS, SALVADOR BERNAL, SAMUEL CAHAYAG, ALEJANDRO CAMPUNGAN, RUPERTO CERNA, JR., REYNALDO CERNA, PETER CERVANTES, LEONARDO CONDESTABLE, ROLANDO ESLOPOR, ROLLY FERNANDEZ, EDDIE FLORES, ROLANDO FLORES, JUDITO FUDOLIN, LEO GRAPANI, FELIX HUBAHIB, JERRY JUAGPAO, MARCIANO LANUTAN, JOVENTINO MATOBATO, ALFREDO MONIVA, VICTORIANO ORTIZ, JR., RENALDO PIALAN, SEVERO PIALAN, ALFREDO PRUCIA, POCIANO REANDO, HERMENIO REMEGIO, DEMETRIO RUAYA, EDGARDO RUSIANA, NESTOR SALILI, RICHARD SALILI, SAMUEL SALILI, VICENTE SASTRELLAS, ROMEO SUMAYANG and DESIDERIO TABAY the following:
>
> (1) SEPARATION PAY (in lieu of the supposed reinstatement) equivalent to one (1) month pay for every year of service reckoned from the very moment each petitioner was hired as fishermen-crew member of F/B MG-28 by MGTR until the finality of this judgment. A fraction of at least six (6) months shall be considered one (1) whole year. Any fraction below six months shall be paid *pro rata*;
>
> (2) FULL BACKWAGES (inclusive of all allowances and other benefits required by law or their monetary equivalent) computed from the time they were dismissed from employment on August 18, 1997 until finality of this Judgment;
>
> (3) EXEMPLARY DAMAGES in the sum of Fifty Thousand Pesos (₱50,000.00);

(4) ATTORNEY'S FEES equivalent to 10% of the total monetary award.

Considering that a person's income or earning is his "lifeblood," so to speak, *i.e.*, equivalent to life itself, this Decision is deemed **immediately executory pending appeal** should MGTR decide to elevate this case to the Supreme Court.

Let this case be referred back to the Office of the Labor Arbiter for proper computation of the awards.[9]

The CA found that petitioner exercised control over respondents based on the following: (1) respondents were the fishermen crew members of petitioner's fishing vessel, thus, their services to the latter were so indispensable and necessary that without them, petitioner's deep-sea fishing industry would not have come to existence much less fruition; (2) he had control over the entire fishing operations undertaken by the respondents through the master fisherman (*piado*) and the assistant master fisherman (*assistant piado*) employed by him; (3) respondents were paid based on a percentage share of the fish catch did not in any way affect their regular employment status; and (4) petitioner had already invested millions of pesos in its deep-sea fishing industry, hence, it is highly improbable that he had no control over respondents' fishing operations.

Petitioner's motion for reconsideration was denied by the CA in its Resolution dated May 12, 2011.

Aggrieved, petitioner filed the instant petition for review on *certiorari* citing the following as reasons for granting the same, to wit:

I

THE HONORABLE COURT OF APPEALS RENDERED THE ASSAILED DECISION CONTRARY TO LAW AND LOGIC BY CITING THE ABSENCE OF PROOF OF REQUISITES OF A VALID DISMISSAL AS BASIS FOR CONCLUDING THAT THE NLRC GRAVELY ABUSED ITS DISCRETION.

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[9] *Rollo*, pp. 57-58. (Emphasis in the original)

II

THE HONORABLE COURT OF APPEALS EXCEEDED ITS JURISDICTION BY TREATING RESPONDENTS' PETITION FOR CERTIORARI UNDER RULE 65 AS AN ORDINARY APPEAL, AND BY INSISTING ON ITS OWN EVALUATION OF THE EVIDENCE.

III

THE HONORABLE COURT OF APPEALS RENDERED THE DECISION DATED 22 OCTOBER 2010 CONTRARY TO LAW AND THE EVIDENCE ON RECORD.

IV

THE HONORABLE COURT OF APPEALS HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BY MAKING ITS ASSAILED DECISION IMMEDIATELY EXECUTORY PENDING APPEAL IN SPITE OF THE FACT THAT RESPONDENTS DID NOT ASK FOR IMMEDIATE PAYMENT OF SEPARATION PAY AND OTHER CLAIMS, AND DESPITE THE CLAIM OF RESPONDENTS THAT MOST OF THEM ARE CURRENTLY EMPLOYED IN OTHER DEEP-SEA FISHING COMPANIES.[10]

Petitioner contends that no grave abuse of discretion can be attributed to the NLRC's finding affirming that of the LA that the arrangement between petitioner and respondents was a joint venture partnership; and that the CA, in assuming the role of an appellate body, had re-examined the facts and re-evaluated the evidence thereby treating the case as an appeal instead of an original action for *certiorari* under Rule 65.

We are not persuaded.

In *Prince Transport, Inc. v. Garcia*,[11] We held:

The power of the CA to review NLRC decisions *via* a petition for *certiorari* under Rule 65 of the Rules of Court has been settled as early as this Court's decision in *St. Martin Funeral Homes v. NLRC.*

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[10] *Id.* at 19.

[11] 654 Phil. 296 (2011).

In said case, the Court held that the proper vehicle for such review is a special civil action for *certiorari* under Rule 65 of the said Rules, and that the case should be filed with the CA in strict observance of the doctrine of hierarchy of courts. Moreover, it is already settled that under Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902, the CA, pursuant to the exercise of its original jurisdiction over petitions for *certiorari,* is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues. Section 9 clearly states:

x x x x x x x x x

> The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. x x x.

However, equally settled is the rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, *i.e.*, the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. But these findings are not infallible. When there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts. The CA can grant the petition for *certiorari* if it finds that the NLRC, in its assailed decision or resolution, made a factual finding not supported by substantial evidence. It is within the jurisdiction of the CA, whose jurisdiction over labor cases has been expanded to review the findings of the NLRC.[12]

Here, the LA's factual findings was affirmed by the NLRC, however, the CA found that the latter's resolution did not critically examine the facts and rationally assess the evidence on hand, and thus found that the NLRC gravely abused its discretion when it sustained the LA's decision dismissing respondents' complaint for illegal dismissal on the ground of lack of merit. The judicial function of the CA in the exercise of its *certiorari* jurisdiction over the NLRC extends to the careful

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[12] *Prince Transport, Inc. v. Garcia, supra,* at 308-309.

review of the NLRC's evaluation of the evidence because the factual findings of the NLRC are accorded great respect and finality only when they rest on substantial evidence.[13] Accordingly, the CA is not to be restrained from revising or correcting such factual findings whenever warranted by the circumstances simply because the NLRC is not infallible. Indeed, to deny to the CA this power is to diminish its corrective jurisdiction through the writ of *certiorari.*[14]

The main issue for resolution is whether or not an employer-employee relationship existed between petitioner and respondents.

At the outset, We reiterate the doctrine that the existence of an employer-employee relationship is ultimately a question of fact. Generally, We do not review errors that raise factual questions. However, when there is a conflict among the factual findings of the antecedent deciding bodies like the LA, the NLRC and the CA, it is proper, in the exercise of Our equity jurisdiction, to review and re-evaluate the factual issues and to look into the records of the case and re-examine the questioned findings. In dealing with factual issues in labor cases, substantial evidence or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion is sufficient.[15]

In determining the existence of an employer-employee relationship, the following elements are considered: (1) the selection and engagement of the workers; (2) the power to control the worker's conduct; (3) the payment of wages by whatever means; and (4) the power of dismissal.[16] We find all these elements present in this case.

It is settled that no particular form of evidence is required to prove the existence of an employer-employee relationship.

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[13] *Sugarsteel Industrial, Inc. v. Victor Albina, et al.,* G.R. No. 168749, June 6, 2016.

[14] *Id.*

[15] *Javier v. Fly Ace Corporation, et al.,* 682 Phil. 359, 371 (2012).

[16] *Jo v. NLRC*, 381 Phil. 428, 435 (2000).

Any competent and relevant evidence to prove the relationship may be admitted.[17]

In this case, petitioner contends that it was the *piado* who hired respondents, however, it was shown by the latter's evidence that the employer stated in their Social Security System (*SSS*) online inquiry system printouts was MGTR, which is owned by petitioner. We have gone over these printouts and found that the date of the SSS remitted contributions coincided with the date of respondents' employment with petitioner. Petitioner failed to rebut such evidence. Thus, the fact that petitioner had registered the respondents with SSS is proof that they were indeed his employees. The coverage of the Social Security Law is predicated on the existence of an employer-employee relationship.[18]

Moreover, the records show that the 4% backing incentive fee which was divided among the fishermen engaged in the fishing operations approved by petitioner was paid to respondents after deducting the latter's respective *vale* or cash advance.[19] Notably, even the *piado's* name was written in the backing incentive fee sheet with the corresponding *vale* which was deducted from his incentive fee. If indeed a joint venture was agreed upon between petitioner and respondents, why would these fishermen obtain *vale* or cash advance from petitioner and not from the *piado* who allegedly hired and had control over them.

It was established that petitioner exercised control over respondents. It should be remembered that the control test merely

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[17] *Opulencia Ice Plant and Storage v. NLRC*, G.R. No. 98368, December 15, 1993, 228 SCRA 473, 478.

[18] *Flores v. Nuestro*, 243 Phil. 712, 715 (1988), citing *Roman Catholic Archbishop of Manila v. Social Security Commission*, 110 Phil. 616, 621 (1961); *Insular Life Assurance Co. Ltd. v. Social Security Commission*, 113 Phil. 708, 713 (1961); *Insular Lumber Company v. SSS*, 117 Phil. 137, 140 (1963); *Investment Planning Corp. of the Phil. v. SSS*, 129 Phil. 143, 149 (1967); *SSS v. CA*, 140 Phil. 549, 551 (1969).

[19] CA *rollo*, p. 465.

calls for the existence of the right to control, and not necessarily the exercise thereof. It is not essential that the employer actually supervises the performance of duties by the employee. It is enough that the former has a right to wield the power.[20]

Petitioner admitted in his pleadings that he had contact with respondents at sea via the former's radio operator and their checker. He claimed that the use of the radio was only for the purpose of receiving requisitions for the needs of the fishermen in the high seas and to receive reports of fish catch so that they can then send service boats to haul the same. However, such communication would establish that he was constantly monitoring or checking the progress of respondents' fishing operations throughout the duration thereof, which showed their control and supervision over respondents' activities. Consequently, We give more credence to respondents' allegations in their petition filed with the CA on how such control was exercised, to wit:

> The private respondent (petitioner) controls the entire fishing operations. For each mother fishing boat, private respondent assigned a master fisherman (piado) and assistant master fisherman (assistant piado), who every now and then supervise the fishing operations. Private respondent also assigned a checker and assistant checker based on the office to monitor and contact every now and then the crew at sea through radio. The checker and assistant checker advised then the private respondent of the condition. Based on the report of the checker, the private respondent, through radio, will then instruct the "piado" how to conduct the fishing operations.[21]

Such allegations are more in consonance with the fact that, as the CA found, MGTR had already invested millions of pesos in its deep-sea fishing industry.

The payment of respondents' wages based on the percentage share of the fish catch would not be sufficient to negate the

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[20] *Jo v. NLRC*, *supra* note 16, citing *Equitable Banking Corporation v. NLRC*, 339 Phil. 541, 558 (1997); *MAM Realty Development Corporation v. NLRC*, 314 Phil. 838, 842 (1995); *Zanotte Shoes v. NLRC*, 311 Phil. 272, 277 (1995).

[21] CA *rollo*, p. 11.

employer-employee relationship existing between them. As held in *Ruga v. NLRC*:[22]

x x x [I]t must be noted that petitioners received compensation on a percentage commission based on the gross sale of the fish-catch, *i.e.*, 13% of the proceeds of the sale if the total proceeds exceeded the cost of the crude oil consumed during the fishing trip, otherwise, only 10% of the proceeds of the sale. Such compensation falls within the scope and meaning of the term "wage" as defined under Article 97(f) of the Labor Code, thus:

> (f) "Wage" paid to any employee shall mean the remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered, and included the fair and reasonable value, as determined by the Secretary of Labor, of board, lodging, or other facilities customarily furnished by the employer to the employee. x x x[23]

Petitioner wielded the power of dismissal over respondents when he dismissed them after they refused to sign the joint fishing venture agreement.

The primary standard for determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual trade or business of the employer.[24] Respondents' jobs as fishermen-crew members of F/B MG 28 were directly related and necessary to petitioner's deep-sea fishing business and they had been performing their job for more than one year. We quote with approval what the CA said, to wit:

Indeed, it is not difficult to see the direct linkage or causal connection between the nature of petitioners' (now respondents) work *vis-a-vis* MGTR's line of business. In fact, MGTR's line of business could

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[22] 260 Phil. 280 (1990).

[23] *Ruga v. NLRC, supra,* at 291.

[24] *Tan v. Lagrama*, 436 Phil. 190, 204 (2002).

not possibly exist, let alone flourish without people like the fishermen crew members of its fishing vessels who actually undertook the fishing activities in the high seas. Petitioners' services to MGTR are so indispensable and necessary that without them MGTR's deep-sea fishing industry would not have come to existence, much less fruition. Thus, We do not see any reason why the ruling of the Supreme Court in *Ruga v. National Labor Relations Commission* should not apply squarely to the instant case, *viz.*:

> x x x The hiring of petitioners to perform work which is necessary or desirable in the usual business or trade of private respondent x x x [qualifies] them as regular employees within the meaning of Article 280[25] of the Labor Code as they were indeed engaged to perform activities usually necessary or desirable in the usual fishing business or occupation of private respondent.[26]

As respondents were petitioner's regular employees, they are entitled to security of tenure under Section 3,[27] Article XIII

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[25] Art. 280 of the Labor Code which provides:

Art. 280. *Regular and Casual Employment.* The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph; Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

[26] *Rollo*, pp. 45-46. (Emphasis and underscoring omitted)

[27] Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security

of the 1987 Constitution. It is also provided under Article 279 of the Labor Code, that the right to security of tenure guarantees the right of employees to continue in their employment absent a just or authorized cause for termination. Considering that respondents were petitioner's regular employees, the latter's act of asking them to sign the joint fishing venture agreement which provides that the venture shall be for a period of one year from the date of the agreement, subject to renewal upon mutual agreement of the parties, and may be pre-terminated by any of the parties before the expiration of the one-year period, is violative of the former's security of tenure. And respondents' termination based on their refusal to sign the same, not being shown to be one of those just causes for termination under Article 282,[28] is, therefore, illegal.

An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.[29]

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of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

[28] Art. 282. Termination by employer. An employer may terminate an employment for any of the following causes:

a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

b. Gross and habitual neglect by the employee of his duties;

c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

d. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

e. Other causes analogous to the foregoing.

[29] Art. 279 of the Labor Code.

Respondents who were unjustly dismissed from work are entitled to reinstatement and backwages, among others. However, We agree with the CA that since most (if not all) of the respondents are already employed in different deep-sea fishing companies, and considering the strained relations between MGTR and the respondents, reinstatement is no longer viable. Thus, the CA correctly ordered the payment to each respondent his separation pay equivalent to one month for every year of service reckoned from the time he was hired as fishermen-crew member of F/B MG-28 by MGTR until the finality of this judgment.

The CA correctly found that respondents are entitled to the payment of backwages from the time they were dismissed until the finality of this decision.

The CA's award of exemplary damages to each respondent is likewise affirmed. Exemplary damages are granted by way of example or correction for the public good if the employer acted in a wanton, fraudulent, reckless, oppressive or malevolent manners.[30]

We also agree with the CA that respondents are entitled to attorney's fees in the amount of 10% of the total monetary award. It is settled that where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable.[31]

The legal interest shall be imposed on the monetary awards herein granted at the rate of six percent (6%) *per annum* from the finality of this judgment until fully paid.[32]

Petitioner's contention that there is no justification to incorporate in the CA decision the immediate execution pending

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[30] *McMer Corp., Inc. v. NLRC*, G.R. No. 193421, June 4, 2014, 725 SCRA 1, 24.

[31] *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*, 639 Phil. 1, 16 (2010).

[32] *Leus v. St. Scholastica's College Westgrove*, G.R. No. 187226, January 28, 2015, 748 SCRA 378, 414; *Nacar v. Gallery Frames, et al.*, 716 Phil. 267 (2013).

appeal of its decision is not persuasive. The petition for *certiorari* filed with the CA contained a general prayer for such other relief and remedies just and equitable under the premises. And this general prayer is broad enough to justify extension of a remedy different from or together with the specific remedy sought.[33] Indeed, a court may grant relief to a party, even if the party awarded did not pray for it in his pleadings.[34]

WHEREFORE, the petition for review on *certiorari* is **DENIED**. The Decision dated October 22, 2010 and the Resolution dated May 12, 2011 of the Court of Appeals in CA-G.R. SP No. 55486-MIN are hereby **AFFIRMED**. The monetary awards which are herein granted shall earn legal interest at the rate of six percent (6%) *per annum* from the date of the finality of this Decision until fully paid.

SO ORDERED.

Carpio (Chairperson), *Mendoza, Leonen,* and *Jardeleza, JJ.,* concur.

SPECIAL THIRD DIVISION

[G.R. No. 200349. March 6, 2017]

FE B. YABUT and NORBERTO YABUT, substituted by his heirs represented by CATHERINE Y. CASTILLO, *petitioners, vs.* **ROMEO ALCANTARA, substituted by his**

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[33] *Prince Transport, Inc. v. Garcia*, *supra* note 11, at 314; See *BPI Family Bank v. Buenaventura,* 508 Phil. 423, 436 (2005), citing *Morales v. Court of Appeals,* 499 Phil. 655, 670 (2005), citing *Schenker v. Gemperle*, 116 Phil. 194, 199 (1962).

[34] *BPI Family Bank v. Buenaventura, supra*, at 436-437, citing *Morales v. Court of Appeals*, *supra*; *First Metro Investment Corporation v. Este Del Sol Mountain Reserve, Inc*., 420 Phil. 902, 920 (2001).

heirs represented by FLORA LLUCH ALCANTARA, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; A PETITION FOR REVIEW ON *CERTIORARI* IS AN APPEAL FROM A RULING OF A LOWER TRIBUNAL ON PURE QUESTIONS OF LAW; EXCEPTIONS; PRESENT.— True, a petition for review on *certiorari* under Rule 45 is an appeal from a ruling of a lower tribunal on pure questions of law. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact. It is only in exceptional circumstances that we admit and review questions of fact. These recognized exceptions are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by parties, which, if properly considered, would justify a different conclusion. Here, the rulings by the courts below are manifestly mistaken, due to misapprehension of facts.

2. CIVIL LAW; LAND REGISTRATION; ACTION FOR RECONVEYANCE; TO WARRANT RECONVEYANCE OF THE LAND, THE PLAINTIFF MUST ALLEGE AND

PROVE, AMONG OTHERS, OWNERSHIP OF THE LAND IN DISPUTE AND THE DEFENDANT'S ERRONEOUS, FRAUDULENT OR WRONGFUL REGISTRATION OF THE PROPERTY; REQUISITES.— An action for reconveyance is a legal and equitable remedy that seeks to transfer or reconvey property, wrongfully registered in another person's name, to its rightful owner. To warrant reconveyance of the land, the plaintiff must allege and prove, among others, ownership of the land in dispute and the defendant's erroneous, fraudulent or wrongful registration of the property. The following requisites must concur: (1) the action must be brought in the name of a person claiming ownership or dominical right over the land registered in the name of the defendant; (2) the registration of the land in the name of the defendant was procured through fraud or other illegal means; (3) the property has not yet passed to an innocent purchaser for value; and (4) the action is filed after the certificate of title had already become final and incontrovertible but within four years from the discovery of the fraud, or not later than ten (10) years in the case of an implied trust.

3. ID.; ID.; ID.; A FREE PATENT APPLICATION IS NOT PROOF OF OWNERSHIP UNTIL ALL REQUIREMENTS ARE MET AND THE PATENT IS GRANTED.— [A]lcantara's claim over Lots 6509-C and -D stemmed from the transaction between Jamisola and Suazola. However, x x x Suazola only validly obtained Lot 6509-A, which he eventually sold to Andrada. Since Suazola's free patent application (FPA V-8352) over the entire 11.5 hectares of Lot 6509 was denied, he was ordered to file a new application, but only with respect to Lot 6509-A. Clearly realizing this problem, Alcantara himself applied for a free patent over Lots 6509-C and -D. Said free patent applications were, however, never granted. In fact, Alcantara was one of those ordered to vacate the premises of Lot 6509 by virtue of the Order of Execution issued by the DANR. Nevertheless, the RTC and the CA still gave weight to Alcantara's free patent applications and declared him as the real owner of the properties in question. It is settled, however, that a free patent application is not proof of ownership until all requirements are met and the patent is granted. Also, while Alcantara filed his application for free patent over Lot 6509-C

only on October 15, 1960, and the one over Lot 6509-D on April 25, 1962, Ballesteros had filed his as early as December 9, 1927, which was decided with finality in G.R. No. L-17466. In order to obtain title over public agricultural lands, the procedure laid down under the law should be strictly followed. But Alcantara simply bought the rights over the property from the defeated claimants and applied for free patents without fulfilling the requirements for the grant of a free patent. Alcantara's acts alone could not ripen into ownership over said public agricultural lands.

4. ID.; ID.; ID.; THE FILING OF A FREE PATENT APPLICATION AMOUNTS TO AN ADMISSION THAT THE LAND IS A PUBLIC LAND, AND THE MERE POSSESSION OF A LAND FOR THIRTY (30) YEARS DOES NOT AUTOMATICALLY DIVEST THE LAND OF ITS PUBLIC CHARACTER.— [E]ven assuming that the subject properties were indeed wrongfully titled in the name of Ballesteros, it would be the State, and not Alcantara, that has the legal standing to bring an action for reconveyance. The filing of a free patent application amounts to an admission that the land is a public land, and thus, he could not be the rightful owner of the same. Hence, Alcantara was deemed to have acknowledged that the lands covered by his free patent applications actually belong to the State. It would have been absurd for him to still apply for the purchase of the properties which he believed were truly his. Moreover, even if Alcantara and his predecessors-in-interest had really been in open, continuous, exclusive, and notorious possession for thirty (30) years, such did not and could not ripen into lawful ownership. The mere possession of a land for thirty (30) years does not automatically divest the land of its public character. Respondents cannot, therefore, maintain that Alcantara was the rightful owner of the subject land, much less the person qualified for the issuance of a free patent, when the latter did not do anything to secure a title or confirm an imperfect one, assuming that he was entitled to the same.

5. ID.; ID.; ID.; IN AN ACTION FOR RECONVEYANCE, THE CLAIMANT/COMPLAINANT HAS THE BURDEN OF PROVING OWNERSHIP OVER THE REGISTERED LAND.— It now becomes clear that before the registration of

title over the subject properties in the name of Ballesteros, the same had been public land and as such, could not have been possibly owned by any private person with a judicially confirmed title over the same. To reiterate, Alcantara merely filed free patent applications, which were, unfortunately, never granted. It is settled that in an action for reconveyance, the free patent and the certificate of title are respected as incontrovertible. What is sought instead is the transfer of the title to the property, which has been wrongfully or erroneously registered in the defendant's name. All that is needed to be alleged in the complaint are these two (2) crucial facts, namely, (1) that the plaintiff was the owner of the land, and (2) that the defendant had illegally dispossessed him of the same. Therefore, the claimant/complainant has the burden of proving ownership over the registered land. Considering the overwhelming amount of evidence which include final decisions of no less than the Court itself, recognizing the standing claims of Ballesteros over Lots 6509-C and -D, the RTC and the CA undeniably committed a reversible error when they ruled that respondents were able to overcome the burden of proof required of them.

6. ID.; ID.; ID.; EXISTENCE OF FRAUD, NOT PROVED.— [R]espondents also failed to show that the registration of the land in the name of Ballesteros was procured through fraud or any other illegal means. A careful perusal of the assailed decisions of the RTC and the CA would also reveal that no actual and definite finding of fraud on the part of Ballesteros was ever made. The RTC merely held that Alcantara was able to prove that he is the true and lawful owner of Lots 6509-C and -D, and petitioners could not be regarded as innocent purchasers for value and in good faith. In fact, it even made a pronouncement as to respondents' failure to prove the existence of fraud. x x x. Likewise, the CA did not state any reasonable explanation as to how the registration in the name of Ballesteros became fraudulent. It seemed to simply equate dubiousness to fraud.

APPEARANCES OF COUNSEL

Jose P. Villamor, Jr. for petitioners.
Alcantara and Alcantara Law Offices for respondents.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a Petition for Review questioning the Decision[1] of the Court of Appeals (*CA*), Cagayan de Oro City, dated March 15, 2011, and its Resolution[2] dated January 25, 2012 in CA-G.R. CV No. 81799-MIN which upheld the Decision[3] of the Regional Trial Court (*RTC*), Branch 21, Pagadian City, dated December 19, 2003, ruling that the requisites for the reconveyance of the subject properties were present.

The factual and procedural antecedents of the case, as borne out by the records, are as follows:

Romeo Alcantara filed a Complaint for Reconveyance alleging that he was the true and lawful owner and possessor of parcels of agricultural-residential land located in Balangasan, Pagadian City, known as Lots 6509-C and 6509-D, Pls-119 (now Lots 8780 and 8781, Cad-11910, respectively) with a combined area of 2.5 hectares, more or less. He claimed that he had been in possession of the property since the time he bought it in 1960 from Pantaleon Suazola, who, in turn, had been continuously and openly in occupation and possession of said property in the concept of an owner for more than thirty (30) years before Alcantara acquired the same. Tiburcio Ballesteros then purportedly employed fraud to have the contested property registered in his name. Barely six (6) months later, Ballesteros sold the lots to his daughter, Fe B. Yabut.

For petitioners' part, on the other hand, they contend that Ballesteros applied for a Sales Application (*SA 10279*) covering

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[1] Penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Edgardo A. Camello, and Leoncia R. Dimagiba, concurring; *rollo*, pp. 35-101.

[2] Penned by Associate Justice Edgardo A. Camello, with Associate Justices Carmelita Salandanan Manahan and Pedro B. Corales, concurring; *id.* at 102-103.

[3] Penned by Associate Judge Rolando L. Goan; *id.* at 58-83.

a total land area of 46.2930 hectares with the Bureau of Lands as far back as December 9, 1927. On July 31, 1928, Barbara Andoy filed a Sales Application (*SA 10960*) over a portion of the same land area applied for by Ballesteros. On April 10, 1930, the Assistant Director of Lands issued a Decision in the case *S.A. No. 10279, Tiburcio Ballesteros, Applicant and Contestant, versus S.A. No. 10960, Barbara Andoy, Applicant and Respondent*, finding that Andoy entered a portion of the land in dispute with the knowledge that the premises had already been applied for by Ballesteros. Since Andoy's entry was not made in good faith, SA 10960 was rejected and SA 10279 was given due course.[4] In July 1931, SA 10279 was parcelled into Lot Nos. 5862, 5863, 6576, 6586, 7098, and 6509.

Thereafter, Andoy's heirs entered and laid out their claims on portions of SA 10279: Faustino Andoy Jamisola on Lot No. 6509, Faustina Jamisola de Calivo on Lot No. 6576, and Oliva Jamisola de Libutan on Lot Nos. 6586 and 7098. Because of this, Ballesteros was forced to file a case of forcible entry against the Jamisola siblings in 1938 before the local Municipal Justice of Peace. This was later elevated to the Court of First Instance of Zamboanga. Unfortunately, Ballesteros, being the Commander of the United States Army Forces in the Far East forces in Western Negros, was captured as a prisoner of war during the World War II and imprisoned for three (3) years at the Capas, Tarlac concentration camp. During Ballesteros's absence or specifically on August 20, 1946, Andoy's son, Faustino Andoy Jamisola, sold a part of the subject property to Pantaleon Suazola. Said part covered an area of six (6) hectares and was later identified as Lot No. 6509-A.[5]

When Ballesteros returned to Pagadian in 1949 after his retirement as Provincial Philippine Constabulary Commander of Pampanga, he learned about the sale of the six (6) hectares between Faustino and Suazola. In deference to Suazola's son, who was his *compadre*, Ballesteros recognized said sale in an

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[4] *Rollo*, pp. 4-5.

[5] *Id.* at 16-17.

Affidavit, despite the covered property being part of SA 10279. Subsequently, Suazola sold the six (6) hectares to B.B. Andrada.

On September 3, 1952, however, Suazola filed Free Patent Application No. V8352 (*FPA No. V8352*) over what he identified as Lot No. 4111, which turned out to be the whole 11.5 hectares of Lot No. 6509. Thus, Ballesteros filed a Letter Protest to the Director of Lands against Suazola's FPA No. V8352. On August 11, 1953, the Director of Lands ruled that the rejection of Andoy's sales application in 1930 and the consequent recognition of better rights in favor of Ballesteros were as much binding upon the Jamisola siblings as it had been upon their mother.[6] The Jamisola siblings then appealed to the Secretary of the Department of Agriculture and Natural Resources (*DANR*). On June 30, 1955, the DANR Secretary excluded the lots being claimed by the Jamisola siblings from SA 10279, in line with the government's land for the landless policy. Ballesteros then filed a motion for reconsideration (*MR*) contending that the Jamisolas were, in fact, not landless and offered proof that they owned several tracts of land. On September 3, 1955, the DANR granted said MR and held that, based on the new evidence presented, the claims of the Jamisolas over the portions in question should be rejected and the whole area covered by the sales application of Ballesteros should be further given due course.[7] The Jamisola siblings filed a petition for *certiorari* before the Court of First Instance (*CFI)* but the same was dismissed. They elevated the case to the Supreme Court which was docketed as G.R. No. L-17466.

Sometime in May 1958, Andrada's son-in-law, Felipe Fetalvero, caused the survey of Lot No. 6509. In said survey, the portion sold to Andrada was identified as Lot No. 6509-A consisting of 6.3616 hectares. The survey likewise showed that the whole of Lot No. 6509 consisted of 10.5047 hectares, plus another hectare of *barangay* roads traversing Lot Nos. 6509-A and 6509-D, for a total of 11.5 hectares. Thus, without

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[6] *Id*. at 22-24.

[7] *Id*. at 24-25.

Lot No. 6509-A and the *barangay* roads, Lot No. 6509 was still left with a total of 4.1431 hectares consisting of Lot No. 6509-B with 1.7154 hectares, Lot No. 6509-C with 0.9821 hectare, and Lot No. 6509-D with 1.4456 hectares.

On August 12 and September 12, 1960, Romeo B. Alcantara bought Lot Nos. 6509-C and 6509-D from Suazola's heirs. He then applied for a Free Patent over Lot No. 6509-C on October 15, 1960 and another over Lot No. 6509-D on April 25, 1962.

On September 18, 1965, the Supreme Court, in G.R. No. L-17466, upheld the CFI's dismissal of the petition filed by the Jamisola siblings as well as the September 3, 1955 Order of the DANR granting the MR of Ballesteros. Despite finality of the Court's decision in G.R. No. L-17466, the Jamisolas and their successors-in-interest still refused to vacate the premises of the subject lots. As a result, the Director of Lands issued an Order of Execution on July 6, 1966 directed to the District Land Officer to order the Jamisolas, their relatives, representatives, tenants, or anybody acting in their behalf to vacate the premises and place Ballesteros in peaceful and exclusive possession of the same. Thereafter, the DANR Land Investigator submitted a report stating that the Jamisolas or any of their relatives was not actually living within the premises.

As a result of the favorable ruling, Ballesteros filed a cadastral answer for the judicial confirmation of his title in the cadastral proceedings over Lot Nos. 6509-C and -D in Cadastral Case No. N-14, LRC Cad. Rec. No. N-475. His title to the subject properties was confirmed in said proceedings and eventually, a decree was made registering such title under the Torrens System as Original Certificate of Title (*OCT*) No. T 0-4,051 on February 24, 1969. Again, Lot No. 6509-A was not included in this OCT since it was that part of the property the sale of which Ballesteros had recognized.

On August 5, 1969, Ballesteros sold Lot Nos. 6509-B, 6509-C, and 6509-D to his daughter, Yabut. Said lots were then registered under TCT No. T-4,975. On September 16, 1969, Alcantara filed a petition for review with the CFI praying that

the issuance of the decree of title over the subject lots in favor of Ballesteros and the Yabuts be set aside since he was the true and lawful owner and possessor of said parcels of land and that they were totally devoid of any lawful claim over the subject lots.

On January 13, 1976, the CFI of Zamboanga del Sur dismissed Alcantara's petition, the dispositive portion of which states:

> IN VIEW OF THE FOREGOING CONSIDERATIONS**,** the motion to dismiss filed by the herein movant Tiburcio Ballesteros is hereby GRANTED and the present petition for review is hereby dismissed. With costs against petitioner.
>
> IT IS SO ORDERED.[8]

Hence, Alcantara filed the Complaint for Reconveyance.

Meanwhile, on July 13, 1993, the heirs of Ballesteros filed an action for reconveyance before the Pagadian RTC, docketed as Civil Case No. 3395, against the heirs of the Jamisola siblings, who had been able to register Lot Nos. 6576 and 7098, Pls-119 in their name in Cadastral Case No. N-14, LRC Cad. RMC No. N-475. When the RTC ruled in favor of the Jamisola heirs, the heirs of Ballesteros appealed before the CA. On January 21, 2003, the CA granted[9] the appeal of the heirs of Ballesteros and pointed out that the litigations should have stopped had the finality of the Court's decision in G.R. No. L-17466 been honored and respected. The appellate likewise chastised the long-time counsel of the Jamisolas, Atty. Antonio Ceniza, for not advising his clients of the legal import of the 1965 final ruling of the Court. The heirs of Jamisola thus filed a petition for review which the Court denied on August 4, 2003 in G.R. Nos. 158953-54.[10] The Order of Denial later became final and executory on October 30, 2003.

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[8] *Id*. at 19.

[9] *Aromin v. Calibo*, CA-G.R. CV No. 68811.

[10] *Calibo v. Aromin*.

On December 19, 2003, the RTC granted Alcantara's Complaint for Reconveyance, thus:

> **WHEREFORE**, judgment is hereby rendered in favor of the plaintiff. Accordingly, defendant is hereby ordered to execute a Deed of Reconveyance in favor of the plaintiff over Lot No. 6509-C, now Lot No. 8780, Pls-119, and Lot No. 6509-D, now Lot No. 8781, Pls-119, both covered by and described in Transfer Certificate No. 4,975, registered in the name of the defendant. Defendant is further ordered to surrender the said transfer certificate of title to the plaintiff together with the Deed of Reconveyance.
>
> In the event of defendant's failure to comply with the foregoing order of the Court, the Sheriff of the Regional Trial Court, Pagadian City, is hereby ordered to execute the necessary Deed of Reconveyance in favor of the plaintiff.
>
> No pronouncement as to cost.
>
> SO ORDERED.[11]

Subsequently, Fe and her husband, Norberto Yabut, (*the Spouses Yabut*) elevated the case to the CA. On March 15, 2011, the appellate court dismissed the appeal and affirmed the RTC Decision, *viz.*:

> **WHEREFORE**, the appeal is **DISMISSED.**
>
> **SO ORDERED**.[12]

After the Spouses Yabut's Motion for Partial Reconsideration had been denied,[13] they filed the instant petition.

The main issue to be resolved in the case at bar is whether or not there is legal basis to support the reconveyance of the properties in question in favor of the Alcantaras.

True, a petition for review on *certiorari* under Rule 45 is an appeal from a ruling of a lower tribunal on pure questions of

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[11] *Rollo*, pp. 82-83. (Emphasis in the original)

[12] *Id*. at 100. (Emphasis in the original)

[13] *Id*. at 102-103.

law. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact. It is only in exceptional circumstances that we admit and review questions of fact.[14] These recognized exceptions are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by parties, which, if properly considered, would justify a different conclusion.[15] Here, the rulings by the courts below are manifestly mistaken, due to misapprehension of facts.

Respondents miserably failed to prove that they are the actual owners of the parcel of land they are claiming. They failed to present adequate evidence pointing to any legal and valid source of a right over said lots.

The RTC held that what was excluded from SA 10279 was the entire 11.5 hectares of Lot 6509, and not merely the six (6) hectares Ballesteros claimed to have been sold by Jamisola to

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[14] *Century Iron Works, Inc., et al. v. Bañas*, 711 Phil. 576, 585 (2013).

[15] *OMB v. De Villa*, G.R. No. 208341, June 17, 2015, 759 SCRA 288, 300-301.

Suazola. It pointed out that in the September 18, 1965 Court's decision, it was actually the whole of Lot 6509 that was excluded from the sales application of Ballesteros without referring to any specific portion or area, to wit:

> x x x So, the Secretary of Agriculture and Natural Resources reversed his decision of June 30, 1955 and affirmed the decision of the Director of Lands **but excepted Lot No. 6509** which was **transferred by Faustina Jamisola to one Pantaleon Suasola and the transfer is also recognized by Ballesteros**.[16]
>
> x x x But upon proof, attached by Ballesteros to his amended motion for reconsideration, that appellants were not quite landless, the Secretary set aside his decision and affirmed the Director's decision, **except with respect to Lot No. 6509** which had been transferred to a certain Suasola, for the reason **that Ballesteros recognized the transfer**.[17]

However, while it is true that there was no mention of a specific part of Lot 6509, said property was repeatedly referred to as the lot which was subject of the transfer between Jamisola and Suazola that was recognized by Ballesteros. The Court stresses that the only sale between Jamisola and Suazola that Ballesteros clearly and expressly recognized was the one made on August 20, 1946 over a six (6)-hectare part of Lot 6509, later identified in a survey as Lot 6509-A. Ballesteros even executed an affidavit specially stating that he was acknowledging said sale to Suazola, only because the latter's son was his *compadre* and only with respect to the six (6) hectares. It could not have been the whole Lot 6509 since the total area of this property covers 11.5 hectares. The lone reason why the DANR failed to specify Lot 6509-A in its September 3, 1955 Order was because the survey on Lot 6509 would be done only in 1958. It had no other way of properly identifying the six (6) hectares which Jamisola sold to Suazola other than by referring to it as Lot 6509, since any portion of Lot 6509 was identified as simply Lot 6509. The Court could not likewise have corrected

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[16] *Jamisola v. Ballesteros,* G.R. No. L-17466. (Emphasis ours.)

[17] *Id*. (Emphasis ours.)

the same in its 1965 Decision since the appeal before it was exclusively on questions of law and it held that the findings of fact made by the CFI are conclusive and binding against it. The sole issue to be resolved then was whether or not the CFI erred when it held that the Director of Lands and DANR had not acted with grave abuse of discretion in rejecting Suazola's free patent application. The Court in G.R. No. L-17466 ruled that both the decisions of the Director of Lands and DANR Secretary were amply backed up by evidence presented by the parties. Thus, contrary to the erroneous findings of the lower courts in the instant case, Ballesteros has always retained his claim over the rest of Lot 6509 which was not part of the sale between Jamisola and Suazola.

An action for reconveyance is a legal and equitable remedy that seeks to transfer or reconvey property, wrongfully registered in another person's name, to its rightful owner. To warrant reconveyance of the land, the plaintiff must allege and prove, among others, ownership of the land in dispute and the defendant's erroneous, fraudulent or wrongful registration of the property.[18] The following requisites must concur: (1) the action must be brought in the name of a person claiming ownership or dominical right over the land registered in the name of the defendant; (2) the registration of the land in the name of the defendant was procured through fraud or other illegal means; (3) the property has not yet passed to an innocent purchaser for value; and (4) the action is filed after the certificate of title had already become final and incontrovertible but within four years from the discovery of the fraud, or not later than ten (10) years in the case of an implied trust.[19]

The Court underscores that Alcantara decided to file the instant action for reconveyance only because the Zamboanga del Sur CFI had dismissed his previous petition against the issuance of title in favor of Ballesteros and the Yabuts over the subject

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[18] *Chu, Jr., et al. v. Caparas*, *et al.*, 709 Phil. 319, 331 (2013).

[19] *New Regent Sources, Inc. v. Tanjuatco, Jr., et al.*, 603 Phil. 321, 328-329 (2009).

lots, insisting that he was the true and lawful owner and possessor of said parcels. Respondents, however, failed to show that they, in fact, are the real owners of Lots 6509-C and -D. The Court in G.R. No. L-17466, as reiterated in G.R. Nos. 158953-54, distinctly declared that Ballesteros waived his rights over Lot 6509 only insofar as the six (6)-hectare portion covered by the aforementioned sale is involved or Lot 6509-A. Apparently, Alcantara's claim over Lots 6509-C and -D stemmed from the transaction between Jamisola and Suazola. However, as thoroughly discussed earlier, Suazola only validly obtained Lot 6509-A, which he eventually sold to Andrada. Since Suazola's free patent application (FPA V-8352) over the entire 11.5 hectares of Lot 6509 was denied, he was ordered to file a new application, but only with respect to Lot 6509-A. Clearly realizing this problem, Alcantara himself applied for a free patent over Lots 6509-C and -D. Said free patent applications were, however, never granted. In fact, Alcantara was one of those ordered to vacate the premises of Lot 6509 by virtue of the Order of Execution issued by the DANR.

Nevertheless, the RTC and the CA still gave weight to Alcantara's free patent applications and declared him as the real owner of the properties in question. It is settled, however, that a free patent application is not proof of ownership until all requirements are met and the patent is granted. Also, while Alcantara filed his application for free patent over Lot 6509-C only on October 15, 1960, and the one over Lot 6509-D on April 25, 1962, Ballesteros had filed his as early as December 9, 1927, which was decided with finality in G.R. No. L-17466. In order to obtain title over public agricultural lands, the procedure laid down under the law should be strictly followed. But Alcantara simply bought the rights over the property from the defeated claimants and applied for free patents without fulfilling the requirements for the grant of a free patent. Alcantara's acts alone could not ripen into ownership over said public agricultural lands. Further, even assuming that the subject properties were indeed wrongfully titled in the name of Ballesteros, it would be the State, and not Alcantara, that has the legal standing to bring an action for reconveyance. The

filing of a free patent application amounts to an admission that the land is a public land, and thus, he could not be the rightful owner of the same. Hence, Alcantara was deemed to have acknowledged that the lands covered by his free patent applications actually belong to the State. It would have been absurd for him to still apply for the purchase of the properties which he believed were truly his.[20] Moreover, even if Alcantara and his predecessors-in-interest had really been in open, continuous, exclusive, and notorious possession for thirty (30) years, such did not and could not ripen into lawful ownership. The mere possession of a land for thirty (30) years does not automatically divest the land of its public character. Respondents cannot, therefore, maintain that Alcantara was the rightful owner of the subject land, much less the person qualified for the issuance of a free patent, when the latter did not do anything to secure a title or confirm an imperfect one, assuming that he was entitled to the same.[21]

It now becomes clear that before the registration of title over the subject properties in the name of Ballesteros, the same had been public land and as such, could not have been possibly owned by any private person with a judicially confirmed title over the same. To reiterate, Alcantara merely filed free patent applications, which were, unfortunately, never granted.

It is settled that in an action for reconveyance, the free patent and the certificate of title are respected as incontrovertible. What is sought instead is the transfer of the title to the property, which has been wrongfully or erroneously registered in the defendant's name. All that is needed to be alleged in the complaint are these two (2) crucial facts, namely, (1) that the plaintiff was the owner of the land, and (2) that the defendant had illegally dispossessed him of the same.[22] Therefore, the claimant/complainant has the burden of proving ownership over the

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[20] *Ramos v. Intermediate Appellate Court*, 256 Phil. 521, 525 (1989).

[21] *Marcopper Mining Corporation v. Garcia*, 227 Phil. 166, 178 (1986).

[22] *Spouses Galang v. Spouses Reyes*, 692 Phil. 652, 662 (2012).

registered land. Considering the overwhelming amount of evidence which include final decisions of no less than the Court itself, recognizing the standing claims of Ballesteros over Lots 6509-C and -D, the RTC and the CA undeniably committed a reversible error when they ruled that respondents were able to overcome the burden of proof required of them.

Finally, respondents also failed to show that the registration of the land in the name of Ballesteros was procured through fraud or any other illegal means. A careful perusal of the assailed decisions of the RTC and the CA would also reveal that no actual and definite finding of fraud on the part of Ballesteros was ever made. The RTC merely held that Alcantara was able to prove that he is the true and lawful owner of Lots 6509-C and -D, and petitioners could not be regarded as innocent purchasers for value and in good faith. In fact, it even made a pronouncement as to respondents' failure to prove the existence of fraud, thus:

> As in the award of moral and exemplary damages, attorney's fees may be awarded only in case plaintiff's action or defendant's stand is so untenable as to amount to gross and evident bad faith.
>
> Without doubt, plaintiff has experienced some suffering by reason of the unjust titling of Lot No. 6509-C and Lot No. 6509-D in the name of Tiburcio Ballesteros. In this case, however, **it was not shown** that the defendants conspired with Tiburcio Ballesteros to **defraud plaintiff**.
>
> As fraud is criminal in nature, it must be proved by clear preponderance of evidence. **The inadequacy of the contract price and the relationship of the vendor Tiburcio Ballesteros to the vendee Fe Yabut, are <u>not</u>, by themselves, proof of fraud**.[23]

Likewise, the CA did not state any reasonable explanation as to how the registration in the name of Ballesteros became fraudulent. It seemed to simply equate dubiousness to fraud, to wit:

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[23] *Rollo*, pp. 81-82. (Emphasis ours.)

x x x While it is true that defendants-appellants succeeded in obtaining title in their favor, **the same was secured under dubious circumstances**. No evidence was presented to establish the claim of defendants-appellants and their predecessors-in-interest to prove that they were in actual, and peaceful possession of the subject property. In fact, to this day, defendants-appellants are not in possession of subject property. **Clearly, the registration of the land in the name of Tiburcio Ballesteros**, and subsequently to defendants-appellants, **was procured through fraud or other illegal means**, and in contravention of the Supreme Court Decision in G.R. No. L-17466.[24]

WHEREFORE, in view of the foregoing, the Court **GRANTS** the petition, and **REVERSES** and **SETS ASIDE** the Decision of the Court of Appeals, Cagayan de Oro City, dated March 15, 2011, and its Resolution, dated January 25, 2012, in CA-G.R. CV No. 81799-MIN. Consequently, the Court dismisses Romeo Alcantara's Complaint for Reconveyance for being devoid of merit. The Court thus **ORDERS** the Alcantaras, their successors-in-interest, relatives, representatives, tenants, or anybody acting in their behalf to vacate the premises and finally place petitioners in peaceful and exclusive possession of the same; and the respondents to pay costs of the suit.

SO ORDERED.

Velasco, Jr. (Chairperson), *Mendoza, Leonen,* and *Jardeleza, JJ.,* concur.

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[24] *Id*. at 98. (Emphasis ours.)

SECOND DIVISION

[G.R. No. 204766. March 6, 2017]

DEPARTMENT OF HEALTH, REPRESENTED BY SECRETARY ENRIQUE T. ONA, *petitioner, vs.* **GLORIA B. AQUINTEY, EDUARDO F. MENDOZA AND AGNES N. VILLANUEVA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGES; INSUBORDINATION; DEFINED; CONTINUING INTENTIONAL REFUSAL TO OBEY A DIRECT ORDER WHICH IS REASONABLE AND WAS GIVEN BY AND WITH PROPER AUTHORITY CONSTITUTES GROSS INSUBORDINATION.— Insubordination is defined as a refusal to obey some orders, which a superior officer is entitled to give and have obeyed. The term imports a willful or intentional disregard of the lawful and reasonable instructions of the employer. x x x. [A]ny doubts which may have been entertained by respondents as to who was really entitled to the contested office of the OIC, should have been cleared when DOH Secretary Dayrit issued Department Order No. 231-D which affirmed Dr. Janairo's assumption of the office of OIC of the ITRMC. Respondents had no excuse in not recognizing Secretary Dayrit's Order as he occupies a position which is even higher than that of Dr. Janairo or Dr. De Leon. As DOH employees, they are bound to obey the lawful orders of the DOH Secretary, notwithstanding any legal issues that may exist between Dr. De Leon and Dr. Janairo. Thus, it becomes apparent that, in view of the clear language of the above CA Resolution and the DOH Secretary's Order, respondents' deliberate refusal to obey Dr. Janairo is not prompted by confusion or by what they claim as their belief in good faith, but by their personal preference or bias in favor of Dr. De Leon and against Dr. Janairo. Thus, respondents' defiance of the successive memoranda and office orders of Dr. Janairo clearly constitutes gross insubordination as it was a continuing intentional refusal to obey a direct order which is reasonable and was given by and with proper authority.

2. ID.; ID.; ID.; ID.; THE QUANTUM OF PROOF NECESSARY FOR A FINDING OF GUILT IS SUBSTANTIAL EVIDENCE, AND THE STANDARD OF SUBSTANTIAL EVIDENCE IS SATISFIED WHERE THE EMPLOYER HAS REASONABLE GROUND TO BELIEVE THAT THE EMPLOYEE IS RESPONSIBLE FOR THE MISCONDUCT AND HIS PARTICIPATION THEREIN RENDERS HIM UNWORTHY OF TRUST AND CONFIDENCE DEMANDED BY HIS POSITION.— In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. Well-entrenched is the rule that substantial proof, and not clear and convincing evidence or proof beyond reasonable doubt, is sufficient as basis for the imposition of any disciplinary action upon the employee. The standard of substantial evidence is satisfied where the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of trust and confidence demanded by his position. In this case, the attending facts and the evidence presented, point to no other conclusion than the administrative liability of respondents for gross insubordination.

3. ID.; ID.; ID.; ID.; GROSS INSUBORDINATION IS A GRAVE OFFENSE PUNISHABLE WITH SUSPENSION FROM THE SERVICE.— Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, which are the applicable Rules at the time of the commission of the offense, gross insubordination is a grave offense punishable by suspension from six months and one day to one year for the first offense. There being no mitigating nor aggravating circumstance, the Court finds no error in the CSC's imposition of the penalty of suspension for nine (9) months.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

Gacayan Paredes Agmata & Associates Law Offices for respondents.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* seeking the reversal and setting aside of the Decision[1] and Resolution[2] of the Court of Appeals (*CA*), dated March 20, 2012 and November 27, 2012, respectively, in CA-G.R. SP No. 108775. The assailed Decision reversed and set aside the October 6, 2008 and March 31, 2009 Resolutions of the Civil Service Commission (*CSC*) finding herein respondents guilty of gross insubordination and imposing upon them the penalty of nine (9) months suspension, while the questioned CA Resolution denied petitioner's Motion for Reconsideration.

The pertinent factual and procedural antecedents of the case are as follows:

On February 24, 2004, the Center for Health Development I, represented by Dr. Eduardo C. Janairo (*Dr. Janairo*), in his capacity as Officer-in-Charge (*OIC*) of the Ilocos Training and Regional Medical Center (*ITRMC*) in San Fernando, La Union, filed before the Department of Health (*DOH*) an administrative complaint charging herein respondents with gross insubordination, grave misconduct, gross neglect of duty and conduct prejudicial to the best interest of the service. The complaint basically alleged that respondents, with full knowledge that Dr. Janairo was the lawfully designated OIC of ITRMC, disregarded and defied the orders issued to them by the latter without any valid or justifiable reason.[3]

Prior to the filing of the above administrative complaint, Dr. Janairo was involved in a dispute as to who, between him

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[1] Penned by Associate Justice Elihu A. Ybañez, with the concurrence of Associate Justices Celia C. Librea-Leagogo and Angelita A. Gacutan, Annex "A" to Petition, *rollo,* pp. 24-42.

[2] Annex "B" to Petition, *id.* at 43-45.

[3] See Affidavit-Complaint, Annex "E" to Petition, *rollo*, pp. 60-64.

and a certain Dr. Gilbert De Leon (*Dr. De Leon*), was the lawfully designated OIC of the ITRMC.

Records disclose that on February 4, 2002, then DOH Secretary, Dr. Manuel A. Dayrit, designated Dr. De Leon as OIC of the ITRMC for a fixed term of one year, or until February 4, 2003. It would appear that Dr. De Leon remained in his position beyond the one-year period or until June 6, 2003 when Secretary Dayrit issued Department Order Nos. 108-A and 108-I relieving him of his duties and responsibilities as OIC and designating Dr. Janairo as his replacement.

Claiming that he was aggrieved by such replacement, Dr. De Leon filed a petition for injunction and/or temporary restraining order (*TRO*) with the Regional Trial Court (*RTC*) of San Fernando, La Union. This dispute between Dr. Janairo and Dr. De Leon spawned a series of cases, including the present petition, which eventually reached this Court.

Meanwhile, on June 23, 2003, the RTC issued a TRO and, thereafter, on July 11, 2003, a writ of preliminary injunction, directing Secretary Dayrit to cease and desist from enforcing his order relieving Dr. De Leon from his post as OIC and designating Dr. Janairo as his replacement.

Secretary Dayrit and Dr. Janairo then filed a petition for *certiorari* with the CA questioning the writ of preliminary injunction issued by the RTC. On November 10, 2003, the CA issued a Resolution which ordered the maintenance of the *status quo*. Pertinent portions of the said Resolution read as follows:

x x x x x x x x x

Without delving yet on the merits of the main petition, this court finds that there is a need to maintain *status quo* so as not to preempt and render nugatory whatever resolution this Court may hand down in its consideration of the main petition x x x

x x x x x x x x x

While we are in the process of determining whether or not the issuance by the Respondent Judge of the mandatory injunction (sic) was done with caution and within the parameters of the law, the *status quo* should be respected in the meantime.

x x x x x x x x x

WHEREFORE, in the interest of an orderly and efficient service and in order to preserve the respective rights of the parties pending actual resolution of the principal controversy, this Court resolves to grant the petitioner's application and hereby issues a Writ of Preliminary Injunction effective until Resolution of the instant Petition for *Certiorari*.

ACCORDINGLY, this Court hereby RESOLVES to direct respondent Judge and/or any person acting under his authority to cease and desist from implementing or enforcing the Order dated 11 July 2003 x x x

RESOLVED FURTHER, to direct private respondent Dr. Gilbert De Leon to cease and desist from discharging and/or performing the duties as Officer-in-Charge of Ilocos Training and Regional Medical Center (ITRMC), San Fernando City, La Union.

RESOLVED FINALLY, to direct both parties to maintain *status quo* or the last, actual, peaceable non-contested status which preceded the original controversy in the court *a quo*, **which is the assumption by petitioner Dr. Eduardo Janairo**.[4]

Thereafter, Secretary Dayrit issued Department Order No. 231-D,[5] directing Dr. Janairo to perform his function as OIC of ITRMC. Nonetheless, Dr. De Leon refused to vacate the office and continued to perform the duties of the OIC.

Subsequent to the issuance of Department Order No. 231-D, Dr. Janairo, issued several Office Orders, Memoranda and letters addressed separately to respondents, as follows:

a. Office Order No. 1414 dated November 14, 2003, directing respondents Aquintey and Mendoza to undertake the inventory of equipment, supplies and materials, drugs and medicines, medical/surgical/lab supplies and all other properties of the hospital and to report directly to Janairo the results thereof. Under this Order, Aquintey and Mendoza were temporarily relieved of their duties as Administrative Officer IV and Accountant III, respectively.

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[4] See CA *rollo*, p. 21. (Emphasis supplied.)

[5] Annex "C" to Petition, *rollo*, p. 46.

b. Memorandum No. 55 dated November 18, 2003, addressed to Aquintey and Mendoza, as well as Memorandum No. 60 dated November 20, 2003, addressed to Villanueva, directing the three respondents to cease and desist from discharging and/or performing the duties and responsibilities inherent to their respective positions. They were, likewise, ordered to refrain from signing official documents pertinent to the day-to-day operations of the hospital and to turn over all records and other pertinent documents of all operational transactions of ITRMC to Dr. Janairo.

c. Letter dated November 20, 2003, requiring Aquintey and Mendoza to submit their written comment/answer within 48 hours for their failure to comply with the directives stated in Office Order No. 1414 and Memorandum No. 55.

d. Memorandum No. 34 dated November 17, 2003, advising Mendoza and Villanueva to hold all transactions awaiting payment and/or issuance of checks in the ITRMC.

e. Memorandum No. 66 dated November 25, 2003, directing Villanueva to turn over all accountabilities to the designated OIC Cashier to be witnessed by the resident auditors;

f. Office Memorandum No. 068-A dated December 5, 2003, ordering Villanueva to discuss with Dr. Janairo the deteriorating condition of ITRMC; and

g. Memorandum No. 71 dated December 11, 2003, directing Villanueva to turn over to the Budget Officer III of the ITRMC within 48 hours from receipt of the said Memorandum various documents consisting of checkbooks for 9 accounts, disbursement records, records of checks issued and cancelled, passbooks and cash receipt journal.

However, respondents did not comply with the said issuances leading to the filing of the abovementioned administrative case against them before the DOH, which was docketed as Administrative Case No. 51-04.

On July 12, 2007, then DOH Secretary Francisco T. Duque III, who took over from Secretary Dayrit, rendered a Decision[6] in the said administrative case finding herein respondents guilty of gross insubordination, grave misconduct, gross neglect of

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[6] Annex "F" to Petition, *id*. at 65-82.

duty and conduct prejudicial to the best interest of the service, and imposing on them the penalty of dismissal from the service including all its accessory penalties.

Secretary Duque ruled that respondents' refusal to recognize the authority of Dr. Janairo as the duly designated OIC of the ITRMC and their willful and intentional disregard of his lawful and reasonable directives rendered them liable for administrative sanctions.

Respondents appealed the above Decision to the CSC and, on October 6, 2008, the CSC issued Resolution No. 081889[7] disposing as follows:

> **WHEREFORE**, the appeal of Gloria B. Aquintey, Eduardo F. Mendoza, and Agnes N. Villanueva is hereby **PARTLY GRANTED**. Accordingly, the Decision dated July 12, 2007 of the Secretary of Health, Department of Health, finding them guilty of Grave Misconduct, Gross Neglect of Duty, Gross Insubordination, and Conduct Prejudicial to the Best Interest of the Service and imposing upon them the penalty of dismissal from the service, and the Resolution dated February 13, 2008, denying their motion for reconsideration are **MODIFIED** to the extent that Aquintey, Mendoza and Villanueva are found guilty only of Gross Insubordination and are hereby imposed the penalty of nine (9) months suspension.[8]

The CSC held that it is clear from the language of the *status quo* order issued by the CA in the *certiorari* case filed by Secretary Dayrit and Dr. Janairo that the last actual, peaceable and uncontested status which preceded the original controversy in the appellate court refers to the assumption of office by Dr. Janairo; hence, respondents' failure to comply with the various issuances of Dr. Janairo amounts to gross insubordination. However, the CSC did not find respondents liable for grave misconduct, conduct prejudicial to the best interest of the service and gross neglect of duty. Thus, the CSC imposed upon them the penalty of suspension for nine months.

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[7] Annex "G" to Petition, *id.* at 83-90.

[8] *Id*. at 90.

Respondents filed a motion for partial reconsideration, but the CSC denied it in its Resolution No. 090489 dated March 31, 2009.

Unsatisfied with the above Resolution, respondents filed a petition for review with the CA.

On March 20, 2012, the CA promulgated its assailed Decision with the following dispositive portion:

> **WHEREFORE**, premises considered, the instant Petition is hereby **GRANTED** and CSC Resolutions Nos. 081889 dated October 6, 2008 and 090489 dated March 31, 2009, finding petitioners Gloria B. Aquintey, Eduardo F. Mendoza and Agnes N. Villanueva guilty of Gross Insubordination and imposing upon them the penalty of nine (9) months suspension, are hereby **REVERSED** and **SET ASIDE**. The Secretary of Health is hereby directed to pay the petitioners their salaries during the 9-month suspension.
>
> **SO ORDERED.**[9]

The CA ruled that, while there was no question that herein respondents indeed refused to obey the orders of Dr. Janairo as the duly-designated OIC of the ITRMC, such disobedience was based on their belief in good faith that it was Dr. De Leon who was entitled to the position being contested. As such, their mistake upon a doubtful question of law excuses them from administrative liability.

Herein petitioner filed a motion for reconsideration, but the CA denied it in its Resolution dated November 27, 2012.

Hence, this petition for review on *certiorari* based on the sole ground that the assailed Decision of the CA is not in accord with law and jurisprudence.

The Court finds the petition meritorious.

The basic issue in the present case is whether or not respondents are guilty of gross insubordination when they chose not to follow the various orders of Dr. Janairo which were issued in his capacity as OIC of the ITRMC.

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[9] *Rollo*, pp. 40-41.

Insubordination is defined as a refusal to obey some orders, which a superior officer is entitled to give and have obeyed.[10] The term imports a willful or intentional disregard of the lawful and reasonable instructions of the employer.[11]

In her Answer to the show-cause letter of Dr. Janairo, respondent Aquintey, aside from refusing to obey the directives of the former, even accused him of grave misconduct, abuse of authority and usurpation of authority. On the other hand, respondent Mendoza never filed an answer or comment to Dr. Janairo's show-cause letter. On her part, respondent Villanueva never attempted to see and meet with Dr. Janairo to discuss the condition of the hospital, as required by the latter. These instances clearly show that respondents never recognized Dr. Janairo's authority as OIC.

There can be no denying that respondents were aware of the November 10, 2003 Resolution of the CA which ordered the maintenance of the *status quo*. The supposed confusion as to what the CA considers as the *status quo* in the present controversy is more imagined than real as the fact remains that the language of the CA in its Resolution clearly considered Dr. Janairo's assumption of the office of the OIC as the *status quo*, when the appellate court held, thus:

> RESOLVED FINALLY, to direct both parties to maintain *status quo* or the last, actual, peaceable non-contested status which preceded the original controversy in the court *a quo*, **which is the assumption by petitioner Dr. Eduardo Janairo**.[12]

Also, in the same Resolution, the CA directed the RTC to cease and desist from implementing its Order which prevents the Secretary of Health from designating Dr. Janairo as the OIC. The necessary implication of such directive is that the CA recognizes Dr. Janairo's assumption of the office of OIC

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[10] *Civil Service Commission, et al. v. Arandia*, G.R. No. 199549, April 7, 2014, 721 SCRA 79, 88.

[11] *Id.*

[12] *Supra* note 4.

of the ITRMC, pending its resolution of the controversy as to who is rightfully entitled to the contested position.

Moreover, the said Resolution also clearly directed Dr. De Leon to cease and desist from discharging and/or performing the duties of OIC of the ITRMC.

Furthermore, any doubts which may have been entertained by respondents as to who was really entitled to the contested office of the OIC, should have been cleared when DOH Secretary Dayrit issued Department Order No. 231-D which affirmed Dr. Janairo's assumption of the office of OIC of the ITRMC. Respondents had no excuse in not recognizing Secretary Dayrit's Order as he occupies a position which is even higher than that of Dr. Janairo or Dr. De Leon. As DOH employees, they are bound to obey the lawful orders of the DOH Secretary, notwithstanding any legal issues that may exist between Dr. De Leon and Dr. Janairo. Thus, it becomes apparent that, in view of the clear language of the above CA Resolution and the DOH Secretary's Order, respondents' deliberate refusal to obey Dr. Janairo is not prompted by confusion or by what they claim as their belief in good faith, but by their personal preference or bias in favor of Dr. De Leon and against Dr. Janairo. Thus, respondents' defiance of the successive memoranda and office orders of Dr. Janairo clearly constitutes gross insubordination as it was a continuing intentional refusal to obey a direct order which is reasonable and was given by and with proper authority.

In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.[13] Well-entrenched is the rule that substantial proof, and not clear and convincing evidence or proof beyond reasonable doubt, is sufficient as basis for the imposition of any disciplinary action upon the employee.[14] The standard of substantial evidence

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[13] *Government Service Insurance System, et al. v. Mayordomo*, 665 Phil. 131, 144-145 (2011).

[14] *Id.* at 145.

is satisfied where the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of trust and confidence demanded by his position.[15] In this case, the attending facts and the evidence presented, point to no other conclusion than the administrative liability of respondents for gross insubordination.

Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, which are the applicable Rules at the time of the commission of the offense, gross insubordination is a grave offense punishable by suspension from six months and one day to one year for the first offense. There being no mitigating nor aggravating circumstance, the Court finds no error in the CSC's imposition of the penalty of suspension for nine (9) months.

WHEREFORE, the instant petition is **GRANTED**. The assailed Decision and Resolution of the Court of Appeals, dated March 20, 2012 and November 27, 2012, respectively, are **REVERSED** and **SET ASIDE**. Resolution No. 081889 of the Civil Service Commission, dated October 6, 2008, finding respondents **GUILTY of GROSS INSUBORDINATION**, and imposing upon them the penalty of **NINE (9) MONTHS SUSPENSION**, is **REINSTATED**.

SO ORDERED.

Carpio (Chairperson), *Mendoza, Perlas-Bernabe,*[*] and *Leonen, JJ.,* concur.

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[15] *Id.*

[*] Designated Fifth Member in lieu of Associate Justice Francis H. Jardeleza, per Special Order No. 2416-M, dated January 4, 2017.

EN BANC

[A.C. No. 11256. March 7, 2017]

FLORDELIZA A. MADRIA, *complainant, vs.* **ATTY. CARLOS P. RIVERA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DELIBERATE FALSIFICATION OF THE COURT DECISION AND THE CERTIFICATE OF FINALITY OF THE DECISION REFLECTED A HIGH DEGREE OF MORAL TURPITUDE ON THE LAWYER'S PART, AND MADE A MOCKERY OF THE ADMINISTRATION OF JUSTICE, THEREBY HE BECAME UNWORTHY OF CONTINUING AS A MEMBER OF THE BAR.— The respondent acknowledged authorship of the petition for annulment of marriage, and of the simulation of the decision and certificate of finality. His explanation of having done so only upon the complainant's persistent prodding did not exculpate him from responsibility. For one, the explanation is unacceptable, if not altogether empty. Simulating or participating in the simulation of a court decision and a certificate of finality of the same decision is an outright criminal falsification or forgery. One need not be a lawyer to know so, but it was worse in the respondent's case because he was a lawyer. Thus, his acts were legally intolerable. Specifically, his deliberate falsification of the court decision and the certificate of finality of the decision reflected a high degree of moral turpitude on his part, and made a mockery of the administration of justice in this country. He thereby became unworthy of continuing as a member of the Bar.

2. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; EVERY LAWYER IS ENJOINED TO ACT WITH THE HIGHEST STANDARDS OF TRUTHFULNESS, FAIR PLAY AND NOBILITY IN THE COURSE OF HIS PRACTICE OF LAW.— The respondent directly contravened the letter and spirit of Rules 1.01 and 1.02, Canon 1, and Rule 15.07, Canon 15 of the *Code of Professional Responsibility* x x x. The respondent would shift the blame to his client. That

a lay person like the complainant could have swayed a lawyer like the respondent into committing the simulations was patently improbable. Yet, even if he had committed the simulations upon the client's prodding, he would be no less responsible. Being a lawyer, he was aware of and was bound by the ethical canons of the *Code of Professional Responsibility*, particularly those quoted earlier, which would have been enough to deter him from committing the falsification, as well as to make him unhesitatingly frustrate her prodding in deference to his sworn obligation as a lawyer to always act with honesty and to obey the laws of the land. Surely, too, he could not have soon forgotten his express undertaking under his Lawyer's Oath to "*do no falsehood, nor consent to its commission*." Indeed, the ethics of the Legal Profession rightly enjoined every lawyer like him to act with the highest standards of truthfulness, fair play and nobility in the course of his practice of law. As we have observed in one case: Public confidence in law and lawyers may be eroded by the irresponsible and improper conduct of a member of the bar. Thus, a lawyer should determine his conduct by acting in a manner that would promote public confidence in the integrity of the legal profession. Members of the Bar are expected to always live up to the standards embodied in the Code of Professional Responsibility as the relationship between an attorney and his client is highly fiduciary in nature and demands utmost fidelity and good faith.

3. ID.; ID.; ID.; CANONS 15, 17 AND I8 THEREOF; VIOLATED BY THE RESPONDENT.— [C]anon 15 and Rule 18.04 of Canon 18 of the *Code of Professional Responsibility* required the respondent be true to the complainant as his client. By choosing to ignore his fiduciary responsibility for the sake of getting her money, he committed a further violation of his Lawyer's Oath by which he swore not to "*delay any man's cause for money or malice*," and to "*conduct [him]self as a lawyer according to the best of [his] knowledge and discretion with all good fidelity as well to the courts as to [his] clients*." He compounded this violation by taking advantage of his legal knowledge to promote his own selfish motives, thereby disregarding his responsibility under Canon 17.

4. REMEDIAL LAW; DISBARMENT OF ATTORNEYS; GROUNDS; A LAWYER MAY BE DISBARRED FOR

FALSIFYING OR SIMULATING THE COURT PAPERS WHICH AMOUNTS TO DECEIT, MALPRACTICE, OR MISCONDUCT IN OFFICE.— Under Section 27, Rule 138 of the *Rules of Court*, a lawyer may be disbarred on any of the following grounds, namely: (1) deceit; (2) malpractice; (3) gross misconduct in office; (4) grossly immoral conduct; (5) conviction of a crime involving moral turpitude; (6) violation of the lawyers oath; (7) willful disobedience of any lawful order of a superior court; and (8) corruptly or willfully appearing as a lawyer for a party to a case without authority so to do. Falsifying or simulating the court papers amounted to deceit, malpractice or misconduct in office, any of which was already a ground sufficient for disbarment under Section 27, Rule 38 of the *Rules of Court*. The moral standards of the Legal Profession expected the respondent to act with the highest degree of professionalism, decency, and nobility in the course of their practice of law. That he turned his back on such standards exhibited his baseness, lack of moral character, dishonesty, lack of probity and general unworthiness to continue as an officer of the Court.

5. ID.; ID.; THE POWER TO DISBAR IS ALWAYS EXERCISED WITH GREAT CAUTION AND ONLY FOR THE MOST IMPERATIVE REASONS OR IN CASES OF CLEAR MISCONDUCT AFFECTING THE STANDING AND MORAL CHARACTER OF THE LAWYER AS AN OFFICER OF THE COURT AND MEMBER OF THE BAR, BUT THE COURT DOES NOT HESITATE WHEN THE MISCONDUCT IS GROSS; PENALTY OF DISBARMENT IMPOSED FOR FALSIFYING A COURT DECISION.— It is true that the power to disbar is always exercised with great caution and only for the most imperative reasons or in cases of clear misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the bar. But we do not hesitate when the misconduct is gross, like in the respondent's case. We wield the power now because the respondent, by his gross misconduct as herein described, absolutely forfeited the privilege to remain in the Law Profession.

APPEARANCES OF COUNSEL

Telan Hipe Flores Telan and Associates for complainant.

D E C I S I O N

***PER CURIAM*:**

A lawyer who causes the simulation of court documents not only violates the court and its processes, but also betrays the trust and confidence reposed in him by his client and must be disbarred to maintain the integrity of the Law Profession.

Antecedents

In November 2002, complainant Flordeliza A. Madria consulted the respondent in his law office in Tuguegarao City, Cagayan to inquire about the process of annulling her marriage with her husband, Juan C. Madria. After giving the details of her marriage and other facts relevant to the annulment, the respondent told her that she had a strong case, and guaranteed that he could obtain for her the decree of annulment. He told her, too, that his legal services would cost ₱25,000.00, and that she should return on November 19, 2002 inasmuch as he would still prepare the complaint for the annulment. At the time of the consultation, she was accompanied by her daughter, Vanessa Madria, and her nephew, Jayson Argonza.[1]

The complainant returned to the respondent's office on November 19, 2002. On that occasion, he showed her the petition for annulment, and asked her to sign it. She paid to him an initial amount of ₱4,000.00.[2] He acknowledged the payment through a handwritten receipt.[3]

The complainant again went to the respondent's office on December 16, 2002 to deliver another partial payment, and to follow up on the case. The respondent advised her to just wait for the resolution of her complaint, and assured her that she did not need to appear in court. He explained that all the court notices and processes would be sent to his office, and that he

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[1] *Rollo*, pp. 5-6.

[2] *Id.* at 6.

[3] *Id.* at 13.

would regularly apprise her of the developments.[4] On December 28, 2002, she returned to his office to complete her payment, and he also issued his receipt for the payment.[5]

The complainant's daughter Vanessa thereafter made several follow-ups on behalf of her mother. In the latter part of April 2003, the respondent informed the complainant that her petition had been granted.[6] Thus, Vanessa went to the respondent's office and received a copy of the trial court's decision dated April 16, 2003 signed by Judge Lyliha Abella Aquino of the Regional Trial Court (RTC), Branch 4, in Tuguegarao City.[7]

According to the complainant, the respondent advised her to allow five months to lapse after the release of the decision before she could safely claim the status of "single." After the lapse of such time, she declared in her Voter's Registration Record (VRR) that she was single.[8]

The complainant, again through Vanessa, received from the respondent a copy of the certificate of finality dated September 26, 2003 signed by one Jacinto C. Danao of the RTC (Branch 4).[9]

Believing that the documents were authentic, the complainant used the purported decision and certificate of finality in applying for the renewal of her passport.[10] However, she became the object of an investigation by the National Bureau of Investigation (NBI) because her former partner, Andrew Dowson Grainge, had filed a complaint charging that she had fabricated the decision for the annulment of her marriage. Only then did she learn that the decision and the certificate of finality given by the respondent

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[4] *Supra* note 2.

[5] *Rollo*, p. 14.

[6] *Id*. at 7.

[7] *Id*. at 15-16.

[8] *Supra* note 6.

[9] *Rollo*, p. 17.

[10] *Id*. at 44.

did not exist in the court records, as borne out by the letter signed by Atty. Aura Clarissa B. Tabag-Querubin, Clerk of Court of the RTC Branch IV, to wit:

MS. RACHEL M. ROXAS
Officer-in-Charge
Regional Consular Office
Tuguegarao City

Madam:

This is in reply to your letter dated June 23, 2011 inquiring on whether Civil Case No. **6149** for the Annulment of Marriage between Flordeliza Argonza Madria and Juan C. Madria was filed and decided by this Court.

As per records of this Court, the above-entitled case was filed on April 25, 2003 but was **dismissed** as per Order of this Court dated April 6, 2004.

The signature of the [sic] Judge Lyliha Abella Aquino as appearing in the alleged decision attached to your letter is a blatant **forgery**.

For your information and guidance.

Very truly yours,

(sgd)
AURA CLARISSA B. TABAG-QUERUBIN
Clerk of Court V[11]

As a result, the complainant faced criminal charges for violation of the *Philippine Passport Act* in the RTC in Tuguegarao City.[12] She claims that she had relied in good faith on the representations of the respondent; and that he had taken advantage of his position in convincing her to part with her money and to rely on the falsified court documents.[13]

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[11] *Id*. at 18.

[12] *Supra* note 10.

[13] *Id*.

In his answer,[14] the respondent denies the allegations of the complainant. He averred that he had informed her that he would still be carefully reviewing the grounds to support her petition; that she had insisted that he should prepare the draft of her petition that she could show to her foreigner fiancé; that she had also prevailed upon him to simulate the court decision to the effect that her marriage had been annulled, and to fabricate the certificate of finality; that she had assured him that such simulated documents would be kept strictly confidential; that he had informed her that the petition had been filed in April 2003, but she had paid no attention to such information; that she had not appeared in any of the scheduled hearings despite notice; and that he had not heard from her since then, and that she had not even returned to his office.

Findings and Recommendation of the Integrated Bar of the Philippines (IBP)

After conducting her investigation, IBP Commissioner Rebecca Villanueva-Maala submitted her Report and Recommendation[15] wherein she concluded that the respondent had violated his Lawyer's Oath; and recommended his suspension from the practice of law for a period of two years.

The IBP Board of Governors, albeit adopting the findings of Commissioner Villanueva-Maala, modified the recommendation of suspension from the practice of law for two years to disbarment through its Resolution No. XXI-2015-242, to wit:

> RESOLUTION NO. XXI-2015-242
> CDB Case No. 14-4315
> Flordeliza A. Madria vs.
> Atty. Carlos P. Rivera

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED AND APPROVED, **with modification**, the Report and

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[14] *Id.* at 23-26.

[15] *Id.* at 72-76.

Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", considering violation of his lawyers' oath as a lawyer and a member of the Bar by preparing a simulated Court decision granting the petition for annulment of marriage of complainant and a certificate of finality of the annulment petition. Hence, Atty. Carlos P. Rivera is hereby **DISBARRED from the practice of law and his name stricken off the Roll of Attorneys.**[16]

Ruling of the Court

We adopt the findings and recommendation of the IBP Board of Governors.

The respondent acknowledged authorship of the petition for annulment of marriage, and of the simulation of the decision and certificate of finality. His explanation of having done so only upon the complainant's persistent prodding did not exculpate him from responsibility. For one, the explanation is unacceptable, if not altogether empty. Simulating or participating in the simulation of a court decision and a certificate of finality of the same decision is an outright criminal falsification or forgery. One need not be a lawyer to know so, but it was worse in the respondent's case because he was a lawyer. Thus, his acts were legally intolerable. Specifically, his deliberate falsification of the court decision and the certificate of finality of the decision reflected a high degree of moral turpitude on his part, and made a mockery of the administration of justice in this country. He thereby became unworthy of continuing as a member of the Bar.

The respondent directly contravened the letter and spirit of Rules 1.01 and 1.02, Canon 1, and Rule 15.07, Canon 15 of the *Code of Professional Responsibility*, to wit:

CANON 1 - A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW OF AND LEGAL PROCESSES.

Rule 1.01 - A lawyer **shall not engage in unlawful, dishonest, immoral or deceitful conduct.**

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[16] *Id*. at 70.

> Rule 1.02 - A lawyer **shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system**.
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> x x x x x x x x x

CANON 15 - A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENTS.

> Rule 15.07. - A lawyer **shall impress upon his client compliance with the laws** and the principles of fairness.

The respondent would shift the blame to his client. That a lay person like the complainant could have swayed a lawyer like the respondent into committing the simulations was patently improbable. Yet, even if he had committed the simulations upon the client's prodding, he would be no less responsible. Being a lawyer, he was aware of and was bound by the ethical canons of the *Code of Professional Responsibility*, particularly those quoted earlier, which would have been enough to deter him from committing the falsification, as well as to make him unhesitatingly frustrate her prodding in deference to his sworn obligation as a lawyer to always act with honesty and to obey the laws of the land. Surely, too, he could not have soon forgotten his express undertaking under his Lawyer's Oath to "*do no falsehood, nor consent to its commission*."[17] Indeed, the ethics of the Legal Profession rightly enjoined every lawyer like him to act with the highest standards of truthfulness, fair play and nobility in the course of his practice of law.[18] As we have observed in one case:[19]

> Public confidence in law and lawyers may be eroded by the irresponsible and improper conduct of a member of the bar. Thus,

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[17] *The Lawyer's Oath*, as stated in Section 3, Rule 138 of the *Rules of Court*.

[18] *Arroyo-Posidio v. Vitan*, A.C. No. 6051, April 2, 2007, 520 SCRA 1, 8.

[19] *Nakpil v. Valdes*, A.C. No. 2040, March 4, 1998, 286 SCRA 758, 774.

a lawyer should determine his conduct by acting in a manner that would promote public confidence in the integrity of the legal profession. Members of the Bar are expected to always live up to the standards embodied in the Code of Professional Responsibility as the relationship between an attorney and his client is highly fiduciary in nature and demands utmost fidelity and good faith.

Also, Canon 15[20] and Rule 18.04[21] of Canon 18 of the *Code of Professional Responsibility* required the respondent be true to the complainant as his client. By choosing to ignore his fiduciary responsibility for the sake of getting her money, he committed a further violation of his Lawyer's Oath by which he swore not to "*delay any man's cause for money or malice*," and to "*conduct [him]self as a lawyer according to the best of [his] knowledge and discretion with all good fidelity as well to the courts as to [his] clients*." He compounded this violation by taking advantage of his legal knowledge to promote his own selfish motives, thereby disregarding his responsibility under Canon 17.[22]

Under Section 27,[23] Rule 138 of the *Rules of Court*, a lawyer may be disbarred on any of the following grounds, namely:

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[20] Canon 15. A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his client.

[21] Rule 18.04 - A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

[22] Canon 17. A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

[23] Section 27. *Disbarment or suspension of attorneys by Supreme Court, grounds therefor.*– A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

(1) deceit; (2) malpractice; (3) gross misconduct in office; (4) grossly immoral conduct; (5) conviction of a crime involving moral turpitude; (6) violation of the lawyers oath; (7) willful disobedience of any lawful order of a superior court; and (8) corruptly or willfully appearing as a lawyer for a party to a case without authority so to do.

Falsifying or simulating the court papers amounted to deceit, malpractice or misconduct in office, any of which was already a ground sufficient for disbarment under Section 27, Rule 138 of the *Rules of Court*.[24] The moral standards of the Legal Profession expected the respondent to act with the highest degree of professionalism, decency, and nobility in the course of their practice of law.[25] That he turned his back on such standards exhibited his baseness, lack of moral character, dishonesty, lack of probity and general unworthiness to continue as an officer of the Court.[26]

We note that the respondent was previously sanctioned for unprofessional conduct. In *Cruz-Villanueva v. Rivera*,[27] he was suspended from the practice of law because he had notarized documents without a notarial commission. This circumstance shows his predisposition to beguile other persons into believing in the documents that he had falsified or simulated. It is time to put a stop to such proclivity. He should be quickly removed through disbarment.

The disbarment or suspension of a member of the Philippine Bar by a competent court or other disciplinary agency in a foreign jurisdiction where he has also been admitted as an attorney is a ground for his disbarment or suspension if the basis of such action includes any of the acts hereinabove enumerated.

The judgment, resolution or order of the foreign court or disciplinary agency shall be *prima facie* evidence of the ground for disbarment or suspension. (As amended by SC Resolution dated February 13, 1992.)

[24] *In re Avanceña*, A.C. No. 407, August 15, 1967, 20 SCRA 1012, 1014.

[25] *Manzano v. Soriano*, A.C. No. 8051, April 7, 2009, 584 SCRA 1, 9.

[26] *Flores v. Chua*, A.C. No. 4500, April 30, 1999, 306 SCRA 465, 483.

[27] A.C. No. 7123, November 20, 2006, 507 SCRA 248.

It is true that the power to disbar is always exercised with great caution and only for the most imperative reasons or in cases of clear misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the bar.[28] But we do not hesitate when the misconduct is gross, like in the respondent's case. We wield the power now because the respondent, by his gross misconduct as herein described, absolutely forfeited the privilege to remain in the Law Profession. As we reminded in *Embido v. Pe*,[29] in which we disbarred the respondent lawyer for falsifying a court decision:

> No lawyer should ever lose sight of the verity that the practice of the legal profession is always a privilege that the Court extends only to the deserving, and that the Court may withdraw or deny the privilege to him who fails to observe and respect the Lawyer's Oath and the canons of ethical conduct in his professional and private capacities. He may be disbarred or suspended from the practice of law not only for acts and omissions of malpractice and for dishonesty in his professional dealings, but also for gross misconduct not directly connected with his professional duties that reveal his unfitness for the office and his unworthiness of the principles that the privilege to practice law confers upon him. Verily, no lawyer is immune from the disciplinary authority of the Court whose duty and obligation are to investigate and punish lawyer misconduct committed either in a professional or private capacity. The test is whether the conduct shows the lawyer to be wanting in moral character, honesty, probity, and good demeanor, and whether the conduct renders the lawyer unworthy to continue as an officer of the Court.[30]

WHEREFORE, the Court **FINDS** and **HOLDS Atty. CARLOS P. RIVERA** guilty of **GRAVE MISCONDUCT** and **VIOLATION OF THE LAWYER'S OATH**; and, **ACCORDINGLY**, **ORDERS** his **DISBARMENT.** Let his name be **STRICKEN** from the **ROLL OF ATTORNEYS**.

This decision is **IMMEDIATELY EXECUTORY**.

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[28] *Kara-an v. Pineda*, A.C. No. 4306, March 28, 2007, 519 SCRA 143,146.

[29] A.C. No. 6732, October 22, 2013, 708 SCRA 1.

[30] *Id.* at 10-11.

Let copies of this decision be furnished to: (a) the **OFFICE OF THE COURT ADMINISTRATOR** for dissemination to all courts throughout the country for their information and guidance; (b) the **INTEGRATED BAR OF THE PHILIPPINES**; (c) the **OFFICE OF THE BAR CONFIDANT** for appending to the respondent's personal record as a member of the Bar; and (d) the **OFFICE OF THE PROSECUTOR GENERAL, DEPARTMENT OF JUSTICE** for possible criminal prosecution of the respondent.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Mendoza, Reyes, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

EN BANC

[A.M. No. 14-10-339-RTC. March 7, 2017]

RE: FINDINGS ON THE JUDICIAL AUDIT CONDUCTED IN REGIONAL TRIAL COURT, BRANCH 8, LA TRINIDAD, BENGUET.

[A.M. No. RTJ-16-2446. March 7, 2017]
(Formerly A.M. No. 14-3-53-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE MARYBELLE L. DEMOT-MARIÑAS, REGIONAL TRIAL COURT, BRANCH 8, LA TRINIDAD, BENGUET,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; EVERY JUDGE SHOULD DECIDE CASES WITH DISPATCH AND SHOULD BE CAREFUL, PUNCTUAL, AND OBSERVANT IN THE PERFORMANCE OF HIS FUNCTION, FOR DELAY IN THE DISPOSITION OF CASES ERODES THE FAITH AND CONFIDENCE OF OUR PEOPLE IN THE JUDICIARY, LOWERS ITS STANDARDS AND BRINGS IT INTO DISREPUTE.— The Court has consistently impressed upon judges the need to decide cases promptly and expeditiously under the time-honored precept that justice delayed is justice denied. Every judge should decide cases with dispatch and should be careful, punctual, and observant in the performance of his functions for delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute. Failure to decide a case within the reglementary period is not excusable and constitutes gross inefficiency warranting the imposition of administrative sanctions on the defaulting judge. Here, there is no question as to the guilt of Judge Demot-Mariñas. As shown by the records, she has been remiss in the performance of her responsibilities. She failed to decide cases and resolve pending incidents within the reglementary period, without any authorized extension from this Court.

2. ID.; ID.; ALL JUDGES ARE REQUIRED TO SCRUPULOUSLY OBSERVE THE PERIODS PRESCRIBED FOR DECIDING CASES AND THE FAILURE TO COMPLY THEREWITH IS CONSIDERED A SERIOUS VIOLATION OF THE RIGHT OF THE PARTIES TO SPEEDY DISPOSITION OF THEIR CASES.— Article VIII, Section 15(l) of the 1987 Constitution provides that lower courts have three months within which to decide cases or resolve matters submitted to them for resolution. Moreover, Canon 3, Rule 3.05 of the Code of Judicial Conduct enjoins judges to dispose of their business promptly and decide cases within the required period. In addition, this Court laid down the guidelines in SC Administrative Circular No. 13 which provides, *inter alia*, that "[j]udges shall observe scrupulously the periods prescribed by Article VIII, Section 15, of the Constitution for the adjudication and resolution of all cases or

matters submitted in their courts. Thus, all cases or matters must be decided or resolved within twelve months from date of submission by all lower collegiate courts, while all other lower courts are given a period of three months to do so." The Court has reiterated this admonition in SC Administrative Circular No. 3-99 which requires all judges to scrupulously observe the periods prescribed in the Constitution for deciding cases and the failure to comply therewith is considered a serious violation of the constitutional right of the parties to speedy disposition of their cases.

3. **ID.; ID.; FAILURE TO DECIDE CASES AND OTHER MATTERS WITHIN THE REGLEMENTARY PERIOD CONSTITUTES GROSS INEFFICIENCY AND WARRANTS THE IMPOSITION OF ADMINISTRATIVE SANCTION AGAINST THE ERRING MAGISTRATE.—** This Court has consistently held that failure to decide cases and other matters within the reglementary period constitutes *gross inefficiency* and warrants the imposition of administrative sanction against the erring magistrate. Respondent judge failed to live up to the exacting standards of duty and responsibility that her position required. As a trial judge, Judge Demot-Mariñas is a frontline official of the judiciary and should have at all times acted with efficiency and with probity.

4. **ID.; ID.; ALL DIRECTIVES COMING FROM THE COURT ADMINISTRATOR AND HIS DEPUTIES ARE ISSUED IN THE EXERCISE OF THE COURT'S ADMINISTRATIVE SUPERVISION OF TRIAL COURTS AND THEIR PERSONNEL, HENCE, SHOULD BE RESPECTED, AND UNEXPLAINED DISREGARD THEREOF CONSTITUTES INSUBORDINATION.—** We likewise find similarly concerning is Judge Demot-Mariñas' indifference to the indorsements requiring her to comment on the accusations against her. x x x. We would like to x x x stress that all directives coming from the Court Administrator and his deputies are issued in the exercise of this Court's administrative supervision of trial courts and their personnel, hence, should be respected. These directives are not mere requests, but should be complied with promptly and completely. Clearly, Judge Demot-Mariñas' unexplained disregard of the orders of the OCA for her to comment on the complaint shows her disrespect for and contempt, not just for the OCA, but also for the Court, which exercises

direct administrative supervision over trial court officers and employees through the OCA. Her indifference to, and disregard of, the directives issued to her clearly constituted insubordination which this Court will not tolerate.

5. ID.; ID.; JUDGES SHOULD AVOID CONDUCT OR ANY DEMEANOR THAT MAY TARNISH OR DIMINISH THE AUTHORITY OF THE SUPREME COURT.— We cannot overemphasize that compliance with the rules, directives and circulars issued by the Court is one of the foremost duties that a judge accepts upon assumption to office. This duty is verbalized in Canon 1 of the New Code of Judicial Conduct x x x. The obligation to uphold the dignity of her office and the institution which she belongs to is also found in Canon 2 of the Code of Judicial Conduct under Rule 2.01, which mandates a judge to behave at all times as to promote public confidence in the integrity and impartiality of the judiciary. Under the circumstances, We can thus conclude that the conduct exhibited by Judge Demot-Mariñas constitutes no less than clear acts of defiance against the Court's authority. Her conduct also reveals her deliberate disrespect and indifference to the authority of the Court, shown by her failure to heed our warnings and directives. We cannot tolerate this type of behavior especially on a judge. Public confidence in the judiciary can only be achieved when the court personnel conduct themselves in a dignified manner befitting the public office they are holding. Judges should avoid conduct or any demeanor that may tarnish or diminish the authority of the Supreme Court. Clearly, Judge Demot-Mariñas' attitude, as shown by her unexplained failure to decide 150 cases as well as motions and incidents, and her failure to respond to any of the court's directives despite several reminders, betray her lack of concern for her office. [J]udge Demot-Mariñas has been remiss in the performance of her official duties exacerbated by her audacious stance in defying this Court's orders. We cannot tolerate the attitude of respondent judge in defying this Court's authority and undermining its integrity.

6. ID.; ID.; UNEXPLAINED FAILURE TO RESOLVE PENDING CASES AND MOTIONS WITHIN THE REGLEMENTARY PERIOD DESPITE SEVERAL REMINDERS AND FOLLOW-UPS CONSTITUTES GROSS INEFFICIENCY WHILE NON-COMPLIANCE WITH THE DIRECTIVES/ORDERS OF THE OFFICE OF THE COURT ADMINISTRATOR

(OCA) AND THE COURT CONSTITUTES GROSS MISCONDUCT; PROPER PENALTY.— The rules and jurisprudence are clear on the matter of delay. Failure to decide cases and other matters within the reglementary period constitutes *gross inefficiency* and warrants the imposition of administrative sanction against the erring magistrate. Further, Judge Demot-Mariñas' deliberate and repeated failure to comply with the directives of the OCA constitutes Gross Misconduct which is a serious offense under Section 8, Rule 140 of the Rules of Court. x x x. Judging by the foregoing circumstances, the Court can only conclude that Judge Demot-Mariñas is guilty of *gross inefficiency* resulting in her unexplained failure to resolve pending cases and motions within the reglementary period despite several reminders and follow-ups, and *gross misconduct* for her non-compliance with the directives/orders of the OCA and this Court. In this scenario, Section 17 of the Omnibus Rules implementing the Civil Service Law states that if the respondent judge is found guilty of two or more charges or counts, the penalty imposed should be that corresponding to the most serious charge or counts and the rest may be considered aggravating circumstances. The most serious of the charges against respondent judge is her gross misconduct, and her gross inefficiency is considered an aggravating circumstance.

7. ID.; ID.; CESSATION FROM OFFICE BY REASON OF RESIGNATION, DEATH OR RETIREMENT IS NOT A GROUND TO DISMISS THE CASE FILED AGAINST THE RESPONDENT AT THE TIME THAT SHE WAS STILL IN THE PUBLIC SERVICE.— We would have imposed the penalty of dismissal from service on Judge Demot-Mariñas, however, considering that on December 10, 2015, she has filed her certificate of candidacy to run for public office, she is now deemed resigned from judicial office. Nevertheless, cessation from office by reason of resignation, death or retirement is not a ground to dismiss the case filed against her at the time that she was still in the public service. Thus, in *lieu* of the penalty of dismissal for her unethical conduct and gross inefficiency in performing her duties as a member of the bench, We, however, impose instead the accessory penalty of forfeiture of all her retirement benefits, **except** accrued leave credits. Furthermore, she is barred from re-employment in any branch or service of the government, including government-owned and controlled corporations.

D E C I S I O N

***PER CURIAM*:**

This is a consolidated administrative complaint against Judge Marybelle L. Demot-Mariñas (*Judge Demot-Mariñas*), Presiding Judge, Branch 8, Regional Trial Court, La Trinidad, Benguet, which stemmed from (1) the judicial audit of the RTC- Branch 8 from March 30 to April 12, 2014, conducted by the Audit Team of the Court Management Office (*Team*); and (2) the Indorsement from the Office of the Chief Justice regarding the Letter from Ms. Lilia Nugal-Koh wherein the latter sought the intercession of the Court for the speedy disposition of her case.

A.M No. 14-10-339-RTC

Pursuant to Travel Order No. 32-2014 dated March 20, 2014, the judicial audit team conducted a judicial audit in the Regional Trial Court (*RTC*), Branch 8, La Trinidad, Benguet, from March 30 to April 12, 2014. The Court is presided by herein respondent Judge Marybelle Demot-Mariñas.

On the basis of the records presented and actually audited by the Team, the subject court had a total caseload of 309 cases (135 criminal cases and 174 civil cases), with 157 cases submitted for decision (47 criminal cases and 110 civil cases) which are already beyond the reglementary period to decide.

In a Memoradum dated October 3, 2014, the Office of the Court Administrator (*OCA*) recommended to the Honorable Chief Justice Maria Lourdes P. A. Sereno the following, to wit:

A. Hon. Marybelle Demot-Mariñas, Presiding Judge, Branch 8, Regional Trial Court, La Trinidad, Benguet, be DIRECTED to:

(1) CEASE and DESIST from trying/hearing cases in her court, and to DEVOTE her time to (1a) DECIDE the one hundred fifty (150) cases [45 criminal cases and 105 civil cases] submitted for decision, which are beyond the period to decide as provided by law, to wit:

CRIMINAL CASES

CASE COUNT	CASE NUMBER	ACCUSED	NATURE	DATE
1	09-CR-7795	Maria Gloria Angelica Sabado	Grave Coercion	09/27/09
2	09-CR-7794	Maria Gloria Angelica Sabado	Malicious Mischief	09/27/09
3	10-CR-8135	Flor Raposas, et al.	Malicious Mischief	01/04/10
4	03-CR-4932	Wilfredo Pio Alan	Homicide	09/12/07
5	08-CR-7495	John Miguel Ananayo	Frustrated Homicide	04/27/10
6	08-CR-7235	Laruan Quilito Rogelio Andres (AL)	Murder	03/09/10
7	2K-CR-3934	Sunny Aglibot Lorenzo Adato, Jr. Michael Ramirez	Theft	02/08/13
8	09-CR-7764	Arleth Buenconsejo, et al.	Illegal Recruitment	02/08/13
9	09-CR-7786	Arleth Buenconsejo, et al.	Illegal Recruitment	02/08/13
10	09-CR-7787	Arleth Buenconsejo, et al.	Illegal Recruitment	02/08/13
11	09-CR-7783	Arleth Buenconsejo, et al.	Illegal Recruitment	02/08/13
12	10-CR-8175	Narda Balinag Albert Coliado	PD 1602 as amended by RA 9287	03/20/13
13	11-CR-8689	Christopher Patiag	RA 9165	09/17/13
14	05-CR-5991	Avalon Allan	Murder	08/09/09
15	05-CR-5989	Avalon Allan	Frustrated Murder	08/09/09
16	10-CR-8098	James Bagtang	Sec. 5. Art. II, RA 9165	02/09/12
17	07-CR-6715	Dorico Yeno Endeniro	Sec. 5, Art. II, RA 9165	07/22/10
18	06-CR-6117	Santos Balabal	Sec. 5 Art. II, RA 9165	11/19/07

19	09-CR-7599 (appealed case)	Walden Revelar	Grave Threats	04/17/09
20	11-CR-8690	Christopher Patiag	RA 9165	09/17/13
21	07-CR-6791	Roel Nabus	PD 1602 as amended by RA 9287	01/26/09
22	08-CR-7259	Jay Boteng	Murder	01/21/13
23	10-CR-8091	Jack Bahingawan	Frustrated Murder	12/06/11
24	11-CR-8475 (appealed case)	Antonio Coyupan Rey Coyupan Joker Miranda	Malicious Mischief	07/14/11
25	05-CR-6074	Fred Bilog	Sec. 5, Art. II, RA 9165	11/10/08
26	05-CR-5781	Hilton Pulacan	Sec. 5, Art. II, RA 9165	08/07/07
27	05-CR-5782	Hilton Pulacan	Sec. 5, Art. II, RA 9165	08/07/07
28	02-CR-4400	Sps. Florendo and Josephine Lupante	Estafa thru Falisification of Public Documents	09/19/05
29	05-CR-5780	A. Empil	Qualified Theft	12/05/06
30	11-CR-8284	H. Soriano	Sec. 5, Art. II, RA 9165	08/27/13
31	09-CR-7738	Rowena Delfin	Sec. 5, Art. II, RA 9165	07/25/11
32	10-CR-8226	Sonny Dolinen	Estafa	03/13/12
33	08-CR-7209	John Naboye E. Malicdan E. Daniel E. Rones	PD 1602 asAmended by RA 9287	12/17/13
34	11-CR-8286 (appealed case)	Eleanor Sebiano, et al.	Qualified Trespass to Dwelling	02/22/11
35	09-CR-7801 (appealed case)	Uriel Delos Reyes	Serious Physical Injuries	01/18/10

36	09-CR-7802 (appealed case)	Uriel Delos Reyes	Serious Physical Injuries	01/18/37
37	09-CR-7747	Alex Abinon Romel Balarote Dan Morial Julius Casaalan	Frustrated Murder	06/18/13
38	11-CR-8641	Jessie Bernal	Estafa	12/10/13
39	13-CR-9459 (appealed case)	Regina Samidan	BP 22	07/24/13
40	13-CR-9460 (appealed case)	Regina Samidan	BP 22	07/24/13
41	13-CR-9461	Regina Samidan	BP 22	07/24/13
42	13-CR-9462 (appealed case)	Regina Samidan	BP 22	07/24/13
43	13-CR-9463 (appealed case)	Regina Samidan	BP 22	07/24/13
44	13-CR-9517 (appealed case)	Fernando Asunsion	BP 22	08/07/13
45	13-CR-9516 (appealed Case)	Fernando Asunsion	BP 22	08/07/13

CIVIL CASES

CASE COUNT	CASE NUMBER	TITLE	NATURE	DATE SUBMITTED FOR DECISION
1	01-CV-1509	Joseph Tanacio, et al. v. Angelito Narzabal, et al.	Damages	04/16/04
2	06-CV-2293	Lorna Aquino v. Sps. Antonio Abyado, et al.	Specific Performance, Injunction and Reconveyance	01/22/11

3	07-CV-2390 (appealed case)	Belino Tam v. Milagros Vidal and George Vidal	Reconveyance and Damages	02/12/08
4	12-AD-1393	Aniceto Acop & Shirley Acop v. Register of Deeds, Benguet	Petition under Section 108 of PD 1529 for amendment of entries in the Registration Book	01/07/13
5	10-CV-2671 (appealed case)	Sps. Marcial Florida v. Mario Otto & Delio Otto	Recovery of Possession with Damages	01/03/11
6	07-CV-2380	Elvira Laoyan v. Mike Leo, Jr.	Recovery of Possession with Damages	07/10/11
7	07-CV-2379	Catalina Villena v. Sps. Marcos Gayaso, et al.	Annulment of Deed of Sale, Extrajudicial Settlement of Estate	09/14/11
8	10-CV-2601	Emilia Buyagoa v. Minda Colansong	Rescission of Contract with Prayer for Preliminary Injunction	01/27/11
9	10-CV-2666 (appealed case)	Macaria Molitas, et al. v. Cordillera Homeowners Cooperative	Forcible Entry and Damages	01/17/11
10	10-CV-2594	Anthony Wakefiled v. Rafael Tenenan, et al.	Annulment of Documents	08/19/11
11	CV-1645	Placido Carantes v. Benguet Corporation	Recovery of Possession with Preliminary Injunction	10/08/10
12	LRC-N-221	Placido Carantes	Application for Registration of Title	03/09/11
13	03-CV-1820	George Sanchez v. Edith Batore Walker, et al.	Annulment of Affidavit of Adjudication	12/01/05

14	05-CV-2185	Heirs of Empiso Caiso, etal. v. The Barangay Government of Poblacion, La Trinidad, Benguet, et al.	Cancelllation of Tax Declartion	01/23/09
15	08-CV-2455	Mario Nishiyama v. Megalopolis Properties Inc.	Rescission of Contracts with Damages	07/12/13
16	03-CV-1884	Manuel Cuilan v. Mauricio Ambanloc	Violation of Section 194 and 195 of the Local Code/ Injunction with Damages	12/07/05
17	02-CV-1714	Feliciano Balakwid v. Victoria Leano	Judicial Foreclosure of Mortgage	05/10/06
18	10-CV-2679 (appealed case)	Dionisia Palaci v. Simeon and Manuel Basilio	Recovery of Possession with Prayer for Issuance of Preliminary Mandatory Injunction and TRO	05/18/11
19	03-CV-1865	Angela Begnaen, et al. v. The Heirs of Angelita Begnaen Ananayo, et al.	Reconveryance and Damages	09/24/09
20	08-CV-2444	Saturnino Diaz v. Manuel Liu	Recovery of Possession with Damages	02/24/12
21	05-CV-2181	Sps. Marcial & Imelda Tayab v. Henry Longay Jr. in his capacity as Deputy Sheriff IV, Cesar Macagne and Stephen Tolding	Injunction and Damages with application for TRO with Writ of Preliminary Injunction	10/03/11
22	08-CV-2449	Cesar Macagne and Stephen Tolding v.	Indirect Contempt	10/03/11

		Sps. Marcial & Imelda Tayab & Atty. Inglay Fokno		
23	02-CV-1701	Jeffrey Garoy v. Cecilia Morales, et al.	Annulment of Title; Affidavit of Loss & Affidavit of Self Adjudication with Simultaneous Sale with Damages	08/17/05
24	02-CV-1701	Maximo Macli-ing v. Pedro Isican	Damages	09/02/04
25	2K-CV-1491	Fibertex Corp. v. Elizabeth Lagyop and Darwin Dominong	Recovery of Possession with Damages	06/17/06
26	2K-CV-1527	Constancio Olsim and Gregorio Afidchao v. La Trinidad Balikatan Homeowners Assn., et al.	Specific Performance	09/10/03
27	08-CV-2452	Teresita Banggao, rep. by Francis Salis v. Sps. Marcelo & Lolita Geston & the Municipal Trial Court of La Trinidad	Annulment of Judgment with Prayer for the Issuance of Writ of Preliminary Injunction	09/28/08
28	05-CV-2151	Sps. Alejandro and Feliza Carbonell v. Ricky Alangsab, et al.	Injunction with Payer for TRO & Preliminary Injunction, Reduction of Interest Rate of Loan & Damages	03/04/08
29	03-CV-1921	Rural Bank of La Trinidad, represented by	Collection of Sum of Money with Damages	11/13/04

		Ricardo Salis v. Sps. Candido & Florence Radion		
30	2K-CV-1500	Eugenia Zafra Edapes, et al. v. Solomon Alilao, et al.	Annulment of Deeds of Absolute Sale, TCT, Sheriffs Certificates of Sale, Reconveyance and Damages	08/09/05
31	97-CV-1203	Heirs of Larry Ogas v. Benguet State University, et al.	Annulment of Sale & TCT with Damages	05/27/03
32	11-CV-2709	Sps. Cobulan v. Josephine Alasio	Forcible Entry	06/21/11
33	12-CV-2890 (appealed case)	Heirs of Dagiw-a Baca, et al. v. Heirs of Bahanio Atelba, et al.	Recovery of Ownership, et al.	06/10/13
34	12-CV-2831 (appealed case)	Heirs of Alipio Ballesteros, et al. v. Cristina Gorio	Forcible Entry	10/24/12
35	92-CV-0666	Camilo Quinio v. Duray Veloso de Erasmo, et al.	Recovery of Possession and Ownership	09/27/02
36	94-CV-0887	Itogon-Suyoc Mines, Inc. v. James Brett	Recovery of Personal Property, etc.	07/22/04
37	LRC-N-153	Abanga Cossel, et al. v. Director of Lands	Land Registration	05/20/08
38	97-CV-1238	Vicente Lubos v. Smart Communications Inc.	Breach of Contract with Damages	11/27/03
39	01-CV-1666	Gudelia Domingo v. Emmanuel Mariano	Damages	08/07/03
40	12-CV-2830 (appealed case)	Heirs of Toato Bugnay, et al. v. Cristina Gorio	Forcible Entry with Damages	09/17/12

41	13-CV-2946 (appealed case)	Heirs of Cuidno Tapio v. Camilo Madadsic	Accion Publiciana, et al.	11/15/13
42	11-CV-2715 (appealed case)	Aurea Benito, et al. v. Joseph Aquilet, et al.	Reconveyance, Cancelllation of Bad Title, Tax Declaration	08/09/11
43	08-CV-2408 (appealed case)	Samuel Bordon v. Lin Ling Sheng	Collection of Sum of Money	05/08/08
44	03-CV-1831	Frankie Domingo v. Michael Sy	Quieting of Title, Damages with Issuance of Writ of Preliminary Injunction	08/03/10
45	02-CV-1764	Sonia Catarroja, et al. v. Damian Jimenez, et al.	Reconveyance, et al.	12/15/10
46	01-CV-1645	Sps. Gerald and Josephine Alejo v. Samahan ng Buong Lahing Pilipino & Nelia Bulahaw	Annulment of Deeds, Damages et al.	06/23/05
47	12-CV-2841	Amada Eraña v. Jane Ferrer & Registry of Deeds	Recovery of Possession of a parcel of land and Damages	02/08/13
48	95-SP-0086	Pedro Nugal, et al. (Petitioners)	In the Matter of the Settlement of the Intestate Estate of the late Basilio Nugal	05/12/03
49	12-AD-1423	Heirs of Rosalia Quintino v. Arlene Lubos, et al.	Petition for the Surrender of the Owner's Duplicate Copies of Title	05/16/13
50	01-CV-1659	Belen Tacay, et al. v. Ponciano So and Val Nolasco	Injunction, Damages with Prayer for TRO	04/01/04
51	99-CV-1387	Heirs of Jose Tumpao v. Sps.	Recovery of Possession	04/01/04

		Noel and Jessie Alos		
52	03-CV-1888	Heirs of Bido Sabado v. Domingo Bestre and Miller Bestre	Quieting of Title & Ownership	08/11/11
53	03-CV-1814	Jimmy Mateo, et al. v. Miguel Bato, et al.	Annulment of Deed of Sale, etc.	09/24/09
54	02-CV-1765	Mary Jane Alican v. Alvin Soriano	Quo Warranto, Application for Writ of Preliminary Injunction and TRO	08/23/04
55	01-CV-1662	Lolita Velasco v. Charlie Lingbanan, et al.	Quieting of Title; Annulment of Title; Specific Performance or Reconveyance	10/22/04
56	92-CV-0748	Patricio Ciano v. Lutheran Church of the Philippines, et al.	Quieting of Title with Prayer for the Issuance of Writ of Preliminary Injunction	07/30/04
57	04-CV-1995 (appealed case)	Telesforo Amiao & Angela Angon v. Heirs of Patricio Gabao	Unlawful Detainer	06/07/04
58	2K-CV-1565	Heirs of Rufo Sotelo, Jr. v. Melchor Tican, et al.	Injunction	01/13/05
59	01-CV-1681	Ricardo Acop, et al. v. Sps. Ricardo & Juliet Galvez	Cancellation of Title with Damages	06/14/07
60	06-CV-2217	Sps. Jaime & Mary Leo v. Arlene Leo, et al.	Annulment of Documents, Injunction & Damages	11/16/11

61	93-CV-0799	Lourdes Maglaya & Feliza Pil-o v. Ruben Guzman & Hydro Electric Dev't. Corp.	Annulment of Contracts	06/14/02
62	09-CV-1578	Marck Floyd Ambos & Eden Ambos v. LCR of Bokod, Benguet	Petition for Correction of Entries in the Certificate of Live Birth of Mark Floyd Ambos	01/29/13
63	99-CV-1334	Ismael Paatan v. Amado Cortez	Damages	11/10/03
64	03-CV-1812	Trinibank-Rural Bank of La Trinidad, Benguet v. Sps. Juanito & Zenaida Co, et al.	Recovery of Possession and Ownership with Damages	09/25/08
65	02-CV-1704	Leonardo del Rosario, et al. v. Conchita Lucero	Reconveyance, Accounting and Damages	06/28/06
66	06-CV-2208	Benjamin Dampac v. Sps. Victor & Frances Laoyan	Abatement of Nuisance & Damages	08/29/08
67	2K-CV-1559	Heirs of Victor Alejandro Sr., et al. v. Andrea Balictan	Declaration of Nullity of Deed of Donation	05/06/02
68	2K-CV-1573	Pilando Fernandez, et al. v. Philex Mining Corp.	Enforcement of Contract	02/28/03
69	07-CV-2347 (appealed case)	Carmen Amboy & Florencio Amboy v. Sps. Antonio & Rosita Calado	Forcible Entry	07/09/07

70	96-CV-1113	Albert Caoili v. Congyu Marcelino, et al.	Quieting of Title	05/10/02
71	2K-CV-1473	Heirs of Gregorio Abalos v. Peter Sukil-ap, et al.	Recovery of Possession	02/27/03
72	04-CV-2020	Benguet Electric Cooperative v. National Transmission Corp. et al.	Injunction	07/28/09
73	06-CV-2195	Heirs of Violeta Baccay, et al. v. Erasmo Aquiapao, et al.	Annulment of Deed of Extrajudicial Settlement of Estate	08/09/12
74	04-CV-2057	Patricia Buenafe v. Sps. Mario Bastian, et al.	Annulment of Real Estate Mortgage	09/28/05
75	10-CV-2649	Heirs of Carlos Amos et al. v. Delilah Asuncion & Sps. Basilio David, et al.	Annulment of Judgment	12/03/10
76	04-CV-2024	Alma Contada v. Allan Maliones	Damages	04/22/08
77	08-CV-2420	David Dominang v. Hon. Jose Encarnacion et al.	Certiorari	09/10/08
78	13-CV-2919	Agosto Domerez v. Hon. Adolfo Malingan and Marcela Torren	Certiorari	06/06/13
79	98-CV-1290	Esteban v. Gardose	Annulment and/or Cancellation of Deed of Assignment	11/27/03
80	2K-CV-1492	Cosme v. Piay, et al.	Cancellation of Real Estate	02/24/04
81	04-CV-2023	Estate of De Guia v. Sps.	Reconveyance of Property,	03/03/09

		Fernandez	Damages	
82	03-CV-1892	Benguet Electric Coop. v. Tacio	Collection of Sum of Money	06/28/12
83	02-CV-1791	M. Cadiogan v. A. Cadiogan	Settlement of Estate with Prayer for Issuance of a Restraining Order	10/14/05
84	10-CV-2229	Cestona v. Tulio	Reformation of Instrument and Damages	08/18/11
85	10-CV-2645	Calawa, et al. v. Mayor Abalos	Certiorari	11/26/10
86	99-CV-1345	Donato v. Balingan	Declaration of Nullity of Documents	08/17/05
87	13-CV-2906	Esnara v. Tenefrancia, et al.	Declaration of Nullity of Documents	08/16/13
88	03-CV-1877	Sps. Og-oget v. Luis	Annulment of Compromise Settlement	10/08/06
89	04-CV-2060	Kidweng v. Aguilar	Damages	11/16/06
90	10-CV-2599 (appealed case)	Acop v. Municipality of Tublay, Benguet	Recovery of Possession and Damages	03/30/10
91	99-CV-1420	Ambros v. Matias	Annulment of Tax Declaration	11/04/03
92	03-CV-1815	Sps. De Leon v. Dulay	Constitution of Easement of Right of Way	03/08/06
93	2K-CV-1472	Ackiapat v. Berto	Cancellation of Tax Declaration and Damages	07/29/04
94	02-CV-1519	Nixon Guzman, et al. v. Helen Abilao and Feliza Pilo-o	Judicial Partition	08/23/12

95	12-CV-2877	Apolonio, Sr. v. Benguet State University	Accion Publiciana and Quieting of Tile	01/30/14
96	08-CV-2467	Yolanda Daliones v. Sps. Marcelo Agdasi and Ana Agdasi	Conveyance and Damages	09/16/13
97	11-CV-2773	Heirs of Rosalina Lacamen, et al. v. Erlinda Lacamen and Abdel Lacamen	Ejectment and Damages	04/18/12
98	13-CV-2947 (appealed case)	Saturnino Ciano v. Francisco Kiwang, Jr.	Forcible Entry	10/07/13
99	12-CV-2829	Maria Usana v. Severo Alvarez Jr. and Estrella Alavarez	Collection of Sum of Money	10/18/13
100	08-CV-2459	Edwin Zamora v. Rainbow Mission Church	Damages	12/05/13
101	13-CV-2922 (appealed case)	Heirs of Patricia Teofilo v. Sps. Cesar and Virginia Singao, et al.	Forcible Entry	09/13/13
102	07-CV-2382	Province of Benguet v. National Power corporation	Collection of Franchise Tax	03/08/13
103	08-CV-2481	Philex Mining Corporation v. The Province of Benguet	Petition under Section 195 of the Local Gov't. Code with Prayer for the Issuance of a Writ of Preliminary Injunction or TRO	05/06/10

104	12-CV-1745	Desiree Dolin-Sawac v. LCR of Kapangan, Benguet	Petition for Correction & to Supply the entries in the Certificate of Live Birth of Desiree Dolin	01/07/13
105	02-CV-1776	Toquero, et al. Heirs of Santiago Lictag, et al.	Judicial Partition	02/04/13

(1-b) DECIDE the eight (8) cases submitted for decision although still within the reglementary period to resolve, as of audit, to wit:

CRIMINAL CASES

CASE COUNT	CASE NUMBER	TITLE	NATURE	DATE SUBMITTED FOR DECISION
1	10-CR-7978	Efren Andiso	Violation of Sec. 261 (a) BP 881	O2/12/14
2	10-CR-7979	Efren Andiso	Violation of Sec. 261 (a) BP 881	02/12/14

CIVIL CASES

CASE COUNT	CASE NUMBER	TITLE	NATURE	DATE SUBMITTED FOR DECISION
1	13-AD-1487	Domingo v. Registry of Deeds-Benguet	Issuance of New Owner's Duplicate Certificate of Title	01/24/14
2	12-CV-2858	Heirs of Mendoza v. Sps. Mendoza	Annulment of Judgment	01/24/14

3	2K-CV-1492	Cosme v. Piay, et al.	Cancellation of Real Estate	02/24/04
4	12-CV-2877	Apolonio, Sr. v. Benguet State University	Accion Publiciana and Quieting of Title	01/30/14
5	03-CV-1810	Heirs of Busco v. Bulso, et al.	Annulment of Affidavit of Adjudication	02/27/14
6	13-CV-2935 (appealed case)	Tiongsan Realty Development v. Jimmy Yu, et al.	Unlawful Detainer	04/03/14

(1-c) RESOLVE the pending motions/incidents in the following seventeen (17) cases [2 criminal cases and 15 civil cases], to wit:

CRIMINAL CASES

CASE COUNT	CASE NUMBER	TITLE	NATURE	LAST COURT ACTION/ REMARKS
1	12-CR-8795	D. Oblero	Estafa	Demurrer to Evidence filed on 10-10-13 No comment/ opposition filed by prosecution despite directive in Order dated 9-17-13
2	13-CR-9683	Jackellene Menzi	Estafa	Motion to Quash filed on 3-11-14 Prosecution's comment filed on 3-11-14

CIVIL CASES

CASE COUNT	CASE NUMBER	TITLE	NATURE	DATE SUBMIITED FOR RESOLUTION
1	13-CV-2967	Bangonan Livelihood Association Inc. v. Benedict Pineda	Prohibition with Preliminary Injunction and TRO	Order dtd 11-15-13 Atty. De Guzman is given 15 days from receipt of a copy of this order to file his comment to the affirmative defenses contained in the answer of the respondents, after which the incident shall be deemed submitted for resolution
2	03-CV-1847	Rosenia Langbis, et al. v. Sps. Juliana and Bosleng Arcita	Specific Performance	Order dtd. 09-15-05 after the filing of the manifested demurrer to evidence within 5 days and within 10 days to comment thereto, the incident shall be deemed submitted for resolution-Demurrer to Evidence- 09-20-05
3	13-CV-2958	Virginia Dompiles v. Hon. Jose Encarnacion, MTC of Itogon and Atok Big Wedge Corporation	Annulment of the Orders of the MTC with Prayer for TRO and Writ of Preliminary Injunction	Order dated 08-01-13 supplemental petition shall be deemed submitted for resolution
4	13-CV-2949	Gregorio Abalos, Jr. v.	Sum of Money & Damages	Order dated 01-24-14 court given the chance to submit comment on the Motion for

				Judgment on the Pleadings dated 10-10-13 within 10 days from receipt of the copy of the order after which the incident will deemed submitted to resolution-comment attached 02-27-14
5	13-CV-2969	The Province of Benguet rep. by Gov. Nestor Fongwan v. Sps. Maray & Brado Moltio	Cancellation of ARP No. 99-016-03588 and Annulment of Deed of Sale with Damages	Motion for Extension of Time to file comment filed on 01-02-14 Comments/ objections to the affirmative defense on 01-16-14
6	13-CV-2959	Fermin Sernal v. Sps. Esteban Gayados, Jr., et al.	Annulment of Foreclosure Sale, Sheriffs Certificate of Sale, and Certificate of Title	Order dated 11-15-13 the motion to dismiss shall be deemed submitted for resolution-Supplemental Motion to Dismiss filed by defendants on 02-12-14
7	08-CV-2442	Heirs of Nuepe Lamsis, et al. v. Pelagia Velasco, et al.	Injunction, et al.	Order dated 02-21-14 upon receipt of the ruling of this court on plaintiffs evidence on rebuttal, the parties are given a period of 30 days to file their memoranda after which this case shall be submitted for decision with or without such memoranda

8	14-CV-3012	Sps.Bandola v. Rural Bank of San Luis, Pampanga, et al.	Declaration of Nullity of Real Estate Mortgage	Motion to take Disposition- 03-19-14
9	09-CV-2550	Heirs of the Late Olecio v. Sps. Bugtong	Annulment of Documents	Comment/Opposition to defendants' affirmative defenses/ Motion to Dismiss 05-14-10
10	04-CV-2052	Semon v. CarmakMotors Corp.	Rescission of Contract	Urgent ex-parte motion for an earlier resolution-01-10-08
11	13-CV-2992	Benguet Electric Coop. v. Equitable PCI Bank, et al.	Reformation of Instrument	Motion for leave to file attached reply (for defendant BDO) filed on 03-31-14
12	11-CV-2707	Hermenegildo Heiras, Jr. v. Sps.William and Jennifer Gan-gan, et al.	Specific Performance and Damages	Comment to Formal Offer of Evidence filed by defendants on 03-11-14
13	13-CV-2936	Cristina Noepe and Lester Noepe v. Christian Spiritista of the Philippines	Declaration of Nullity of Public Instrument	Reply to the amended answer – 03-25-14 Motion for Extension was filed on 03-27-14
14	11-CV-2769	Christian Chuang v. Celevina Baylon et al.	Declaration of Nullity of Deed of Absolute Sale	Comment/ Opposition to the admissibility of plaintiff's rebuttal evidence dated 02-20-14 filed by defendant
15	10-SP-0121	Petition for Probate/ Allowance of the Holographic will of Saturnino Ebusca v. Rafael Ebusca, et al.	Probate of Will	Motion to issue and an order authorizing Atty. Calonge to withdraw from BCF Credit Coop. filed on 03-02-14

(2) FURNISH this Court copies of the decisions and/or resolutions related to the enumerated cases. This Cease-and-Desist directive shall continue until the aforementioned 157 cases submitted for decision and pending motions/incidents in the 17 cases shall have been finally decided/resolved by Judge Mariñas;

(3) EXPLAIN in writing, within fifteen (15) dqays from notice, why no administrative sanction should be taken against her for her failure to decide the aforementioned one hundred fifty (150) cases within the mandatory period to decide.

B) The Financial Management Office, Office of the Court Administrator be directed to WITHHOLD the salaries, allowances and other benefits of Judge Marybelle Demot Mariñas, pending full compliance with these directives; and

C) The Court Management Office be DIRECTED to prepare the necessary Administrative Order for approval relative to the designation of an assisting judge in Branch 8, Regional Trial Court, La Trinidad, Benguet, to specifically conduct hearings on all cases and attend to all interlocutory matters thereat, but without prejudice to disposing of the same when circumstance/s warrant, such designation to continue until further orders from this Court.

On April 7, 2015, as per recommendation of the OCA, the Court resolved to adopt the findings and recommendations of the OCA.

In compliance with the Court's Resolution, in a Letter Transmittal dated June 4, 2015, Judge Demot-Mariñas apologized to the Court for her failure to decide the cases within the reglementary period. She, however, offered no explanation to such delay but nevertheless admitted her fault in the said delay. She signified her intention to resign as she felt that she was no longer an effective member of the judiciary. Attached with the Letter-Compliance is the Letter of Atty. Maribel Brillantes Macario Pedro (*Atty. Macario Pedro*), Clerk of Court V, Branch 8, RTC, La Trinidad, Benguet showing the partial compliance to the court directives, to wit:

CRIMINAL CASES

CASE NUMBER	ACCUSED	NATURE	LAST COURT ACTION REMARKS	DATE RESOLVED
12-CR-8795	Dominga D. Oblero	Estafa	Demurrer to Evidence filed on 10-10-13	07/31/14
13-CR-9683	Jackellene K. Menzi	Estafa	No comment/ opposition filed by prosecution despite directive in Order dated 9-17-13 Motion to Quash filed on 3-11-14 Prosecution's comment filed on 3-11-14	05/12/14

CIVIL CASES

CASE NUMBER	TITLE	NATURE	LAST COURT ACTION/ REMARKS	Date Resolved
08-CV-2442	Heirs of Nuepe Lamsis, et al. v. Heirs of Pelagia Lamsis	Recovery of Possession, etc.	Order dated 02-21-14 upon receipt of the ruling of this court on plaintiff's evidence on rebuttal, the parties are given a period of 30 days to file their memoranda after which this case shall be submitted for decision with or without such memoranda	06/09/14
09-CV-2550	Heirs of the Late Gloria Luis Olecio v. Sps.	Annulment of Documents, Cancellation	Comment Opposition to defendants' affirmative	08/15/14

	Rosalino Luis Bugtong	of TCT, Reconveyance, Damages with Prayer for a TRO and WPI	defenses/Motion to Dismiss 05-14-10	
11-CV-2707	Hermenigildo Hieras, Jr. v. Sps. William and Jennifer Gangan, et al.	Specific Performance with Damages	Comment to Formal Offer of Evidence filed by defendants on 03-11-14	04/03/14
13-CV-2958	Virginia Dompiles v. Hon. Jose S. Encamacion, Presiding Judge, MTC of Itogon, Benguet and Atok Big Wedge Corporation	Annulment of the Orders of the MTC with Prayer for TRO and Writ of Preliminary Injunction	Order dated 08-01-13 supplemental petition shall be deemed submitted for resolution	05/12/14
13-CV-2959	Fermina O. Bernal v. Sps. Esteban T. Gayados, Jr., et al.	Annulment of Foreclosure Sale, Sheriff's Certificate of Sale, and Certificate of Title	Order dated 11-15-13 the motion to dismiss shall be deemed submitted for resolution-Supplemental Motion to Dismiss filed by defendants on 02-12-14	01/30/15

13-CV-2992	Benguet Electric Coop. v. Equitable PCI Bank, et al.	Reformation of Instrument with Prayer for Payment of Sum of Money and Damages	Motion for leave to file attached reply (for defendant BDO) filed on 03-31-14	04/11/14
14-CV-3012	Sps. Freddie H. Bandola and Celia Bandola v. Rural Bank of San Luis, Pampanga, et al.	Declaration of Nullity of Real Estate Mortgage, etc.	Motion to take Disposition- 03-19-14	03/24/14

SPECIAL PROCEEDINGS CASE

CASE NUMBER	ACCUSED	NATURE	LAST COURT ACTION/REMARKS	Date Resolved
10-SP-0121	Petition for Probate/ Allowance of the Holographic will of Saturnino Ebusca v. Rafael Ebusca et al.	Probate of Will	Motion to issue an order authorizing Atty. Calonge to withdraw from BCF Credit Coop. Filed on 03-02-14	04/16/14

In a Resolution dated August 4, 2015, the Court referred the Letter dated June 4, 2015 of Presiding Judge Demot-Mariñas to the OCA for evaluation, report and recommendation.

A.M. RTJ-16-2446

On February 27, 2013, the Office of the Deputy Court Administrator Raul Villanueva (*DCA Villanueva*) received an indorsement from the Office of the Chief Justice regarding the letter of Ms. Nugal-Koh wherein the latter sought the intercession of the Court for the speedy disposition of her case docketed as Special Proceedings Case No. 95-SP-0086 entitled "*Pedro Nugal, et al. v. Lilia Nugal-Koh, et al.,*" which allegedly had been submitted for resolution for more than ten (10) years already at the time of the complaint.

Acting on the said Letter, a 1st Indorsement dated March 4, 2013 was sent directing Judge Demot-Mariñas to comment thereon. On June 5, 2013, another Letter from Ms. Nugal-Koh, addressed to the Office of the Chief Justice, was received by DCA Villanueva's office again seeking assistance for the immediate resolution of her case. Attached to the said Letter were the (1) Certification dated April 23, 2013 from Atty. Maribel B. Macario, Clerk of Court V, Branch 8, RTC, La Trinidad, Benguet, attesting that no decision was rendered yet in the subject case; and (2) another Letter from the Office of the Chief Justice dated April 12, 2013, referring the letter dated February 13, 2013 of Ms. Nugal-Koh to Judge Demot-Mariñas wherein the latter was requested to submit a feedback on the matter within fifteen (15) days from the receipt thereof.

Consequently, a 2nd Indorsement dated June 5, 2013 was sent to Judge Demot-Marinas, reiterating the earlier directive for her to comment on the status of Ms. Nugal-Koh's case, with a stern warning that appropriate proceedings may be initiated against her for her inaction.

On September 17, 2013, the Office of DCA Villanueva again received a Letter dated September 11, 2013 from Ms. Nugal-Koh repeating her request regarding her case and appending a new certification dated September 2, 2013 attesting that her case remained undecided. Thus, a 3rd Indorsement was sent to respondent judge regarding the matter with the information that initiation of administrative proceedings against her was already being considered for her apparent delay in deciding the subject

case and her blatant disregard of directives relative thereto despite repeated orders.

In an Agenda Report dated February 18, 2014, the OCA found that Judge Demot-Mariñas indeed failed to comply with the repeated directives from the Office of DCA Villanueva, and with the letter from the Office of the Chief Justice requiring her to comment on the status of the subject case. Thus, the OCA recommended that the report be treated as a formal administrative complaint against Judge Demot-Mariñas for insubordination, inefficiency and neglect of duty.

In a Resolution dated June 2, 2014, the Court resolved to treat the OCA's Agenda Report dated February 18, 2014 as a formal administrative complaint against Judge Demot-Mariñas for Inefficiency and Neglect of Duty. In addition, the Court also required respondent to explain why she should not be held administratively liable for her failure to comply with the repeated directives to comment on the status of Special Proceedings Case No. 95-SP-0086. The Court, likewise, directed respondent to comment and submit a report on the status of the above-mentioned case.

In a Resolution dated November 26, 2014, the Court referred the Letter dated September 11, 2014 of Ms. Nugal-Koh to the OCA for evaluation, report and recommendation. As contained therein, Ms. Nugal-Koh said that as of July 9, 2014, no decision has been rendered by respondent Judge Demot-Mariñas in her case as certified by Atty. Macario Pedro, Branch Clerk of Court.

In a Memorandum dated December 1, 2015, the OCA recommended that: (1) the two (2) instant administrative matters be consolidated; and (2) respondent Judge Marybelle L. Demot-Mariñas be found guilty of grave misconduct, insubordination and gross inefficiency and be dismissed from service with forfeiture of all retirement benefits.

On February 17, 2016, as per recommendation of the OCA, considering the similarity of the issues of both cases, the Court resolved to consolidate the instant administrative complaints against respondent Judge Demot-Mariñas.

RULING

We adopt the findings and recommendation of the OCA.

The Court has consistently impressed upon judges the need to decide cases promptly and expeditiously under the time-honored precept that justice delayed is justice denied. Every judge should decide cases with dispatch and should be careful, punctual, and observant in the performance of his functions for delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute. Failure to decide a case within the reglementary period is not excusable and constitutes gross inefficiency warranting the imposition of administrative sanctions on the defaulting judge.[1]

Here, there is no question as to the guilt of Judge Demot-Mariñas. As shown by the records, she has been remiss in the performance of her responsibilities. She failed to decide cases and resolve pending incidents within the reglementary period, without any authorized extension from this Court. Respondent judge failed to: (1) decide 150 cases submitted for decision [45 criminal cases and 105 civil case] which are beyond the period to decide, and to (2) resolve the pending motions/incidents in 17 cases [2 criminal cases and 15 civil cases].[2] Some of the cases were already submitted for decision since 2002, particularly Civil Case No. 2831 and Civil Case No. 2217.[3] More appalling is that she did not give any reason/explanation for her failure to comply with the reglementary period for deciding cases. There were, likewise, no previous requests by her for extension of time to decide said cases. Thus, in the instant case, Judge Demot-Mariñas' gross inefficiency is, therefore, evident in her undue

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[1] *Re: Cases Submitted For Decision Before Hon. Teofilo D. Baluma, Former Judge, Branch 1, Regional Trial Court, Tagbilaran City, Bohol,* 717 Phil. 11, 17 (2013).

[2] *Rollo,* pp. 56-70.

[3] See Memorandum for the Chief Justice from DCA Villanueva dated December 1, 2005, p. 143.

delay deciding 150 cases within the reglementary period and her failure to resolve pending motions/incidents in 17 cases.

Article VIII, Section 15(1) of the 1987 Constitution provides that lower courts have three months within which to decide cases or resolve matters submitted to them for resolution. Moreover, Canon 3, Rule 3.05 of the Code of Judicial Conduct enjoins judges to dispose of their business promptly and decide cases within the required period. In addition, this Court laid down the guidelines in SC Administrative Circular No. 13[4] which provides, *inter alia*, that "[j]udges shall observe scrupulously the periods prescribed by Article VIII, Section 15, of the Constitution for the adjudication and resolution of all cases or matters submitted in their courts. Thus, all cases or matters must be decided or resolved within twelve months from date of submission by all lower collegiate courts, while all other lower courts are given a period of three months to do so." The Court has reiterated this admonition in SC Administrative Circular No. 3-99[5] which requires all judges to scrupulously observe the periods prescribed in the Constitution for deciding cases and the failure to comply therewith is considered a serious violation of the constitutional right of the parties to speedy disposition of their cases.[6]

This Court has consistently held that failure to decide cases and other matters within the reglementary period constitutes *gross inefficiency* and warrants the imposition of administrative sanction against the erring magistrate. Respondent judge failed to live up to the exacting standards of duty and responsibility that her position required. As a trial judge, Judge Demot-Mariñas is a frontline official of the judiciary and should have at all times acted with efficiency and with probity.[7]

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[4] Promulgated on July 1, 1987.

[5] Promulgated on January 15, 1999.

[6] *Re: Cases Submitted For Decision Before Hon. Teofilo D. Baluma, Former Judge, Branch 1, Regional Trial Court, Tagbilaran City, Bohol, supra* note 1, at 16-17.

[7] *Angelia v. Judge Grageda,* 656 Phil. 570, 573 (2011).

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We likewise find similarly concerning is Judge Demot-Mariñas' indifference to the indorsements requiring her to comment on the accusations against her. In all three (3) indorsements issued by the OCA, as well as one (1) Letter from the Office of the Chief Justice, Judge Demot-Mariñas ignored the directives for her to file the required comment since no comment or compliance has been submitted despite several opportunities given to her which ran in a span of more than three (3) years. Also, as per verification by the OCA of the status of Special Proceedings No. 95-SP-0086, as of December 2015, Judge Demot-Mariñas has yet to decide the case which was already submitted for decision since May 12, 2003. It is then apparent that failure to comment despite several directives, as well as the failure to comply with the immediate resolution of Ms. Nugal-Koh's letter, show her propensity to disregard and disobey lawful orders of her superior.

We would like to further stress that all directives coming from the Court Administrator and his deputies are issued in the exercise of this Court's administrative supervision of trial courts and their personnel, hence, should be respected. These directives are not mere requests, but should be complied with promptly and completely. Clearly, Judge Demot-Mariñas' unexplained disregard of the orders of the OCA for her to comment on the complaint shows her disrespect for and contempt, not just for the OCA, but also for the Court, which exercises direct administrative supervision over trial court officers and employees through the OCA. Her indifference to, and disregard of, the directives issued to her clearly constituted insubordination which this Court will not tolerate.[8]

We cannot overemphasize that compliance with the rules, directives and circulars issued by the Court is one of the foremost duties that a judge accepts upon assumption to office. This duty is verbalized in Canon 1 of the New Code of Judicial Conduct:[9]

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[8] *Clemente v. Bautista,* 710 Phil. 10, 16 (2013).

[9] Promulgated on April 27, 2004.

SECTION 7. Judges shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the Judiciary.

SECTION 8. Judges shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the Judiciary, which is fundamental to the maintenance of judicial independence.

The obligation to uphold the dignity of her office and the institution which she belongs to is also found in Canon 2 of the Code of Judicial Conduct under Rule 2.01, which mandates a judge to behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

Under the circumstances, We can thus conclude that the conduct exhibited by Judge Demot-Mariñas constitutes no less than clear acts of defiance against the Court's authority. Her conduct also reveals her deliberate disrespect and indifference to the authority of the Court, shown by her failure to heed our warnings and directives.

We cannot tolerate this type of behavior especially on a judge. Public confidence in the judiciary can only be achieved when the court personnel conduct themselves in a dignified manner befitting the public office they are holding. Judges should avoid conduct or any demeanor that may tarnish or diminish the authority of the Supreme Court.[10] Clearly, Judge Demot-Mariñas' attitude, as shown by her unexplained failure to decide 150 cases as well as motions and incidents, and her failure to respond to any of the court's directives despite several reminders, betray her lack of concern for her office. In sum, Judge Demot-Mariñas has been remiss in the performance of her official duties exacerbated by her audacious stance in defying this Court's orders. We cannot tolerate the attitude of respondent judge in defying this Court's authority and undermining its integrity.

Penalty

The rules and jurisprudence are clear on the matter of delay. Failure to decide cases and other matters within the reglementary

[10] See *Tormis v. Paredes*, A.M. No. RTJ-13-2366, February 4, 2015, 749 SCRA 505, 520.

period constitutes *gross inefficiency* and warrants the imposition of administrative sanction against the erring magistrate.[11] Further, Judge Demot-Mariñas' deliberate and repeated failure to comply with the directives of the OCA constitutes Gross Misconduct which is a serious offense under Section 8,[12] Rule 140 of the Rules of Court.

In *Re: Audit Report in Attendance of Court Personnel of RTC, Branch 32, Manila,*[13] We held that it is **gross misconduct**, even outright disrespect for the Court, for respondent judge to exhibit indifference to the resolution requiring him to comment on the accusations in the complaint thoroughly and substantially. Such failure to comply accordingly betrays not only a recalcitrant streak in character, but also disrespect for the Court's lawful order and directive.

Likewise, in *Alonto-Frayna v. Astih,*[14] a judge who deliberately and continuously fails and refuses to comply with the resolution of this Court is guilty of gross misconduct and insubordination, and was dismissed from service.

Judging by the foregoing circumstances, the Court can only conclude that Judge Demot-Mariñas is guilty of *gross inefficiency*

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[11] *Rubin v. Judge Corpus-Cabochan,* 715 Phil. 318, 334 (2013); *OCA v. Judge Santos,* 697 Phil. 292, 299 (2012); *Re: Cases Submitted for Decision before Hon. Meliton G. Emuslan, Former Judge, Regional Trial Court, Branch 47, Urdaneta City, Pangasinan*, 630 Phil. 269, 272 (2010); *Report on the Judicial Audit Conducted in the RTC, Branch 22, Kabacan, North Cotabato,*468 Phil. 338, 345 (2004).

[12] Rule 140, Section 8 of the Revised Rules of Court, and penalized under Rule 140, Section 11(a) of the same Rules by: 1) Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; 2) Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or 3) A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

[13] 532 Phil. 51, 63-64 (2006).

[14] 360 Phil. 385 (1998).

resulting in her unexplained failure to resolve pending cases and motions within the reglementary period despite several reminders and follow-ups, and *gross misconduct* for her non-compliance with the directives/orders of the OCA and this Court.

In this scenario, Section 17 of the Omnibus Rules implementing the Civil Service Law states that if the respondent judge is found guilty of two or more charges or counts, the penalty imposed should be that corresponding to the most serious charge or counts and the rest may be considered aggravating circumstances.[15] The most serious of the charges against respondent judge is her gross misconduct, and her gross inefficiency is considered an aggravating circumstance.

We would have imposed the penalty of dismissal from service on Judge Demot-Mariñas, however, considering that on December 10, 2015, she has filed her certificate of candidacy to run for public office, she is now deemed resigned from judicial office. Nevertheless, cessation from office by reason of resignation, death or retirement is not a ground to dismiss the case filed against her at the time that she was still in the public service.[16] Thus, in *lieu* of the penalty of dismissal for her unethical conduct and gross inefficiency in performing her duties as a member of the bench, We, however, impose instead the accessory penalty of forfeiture of all her retirement benefits, **except** accrued leave credits. Furthermore, she is barred from re-employment in any branch or service of the government, including government-owned and controlled corporations.

WHEREFORE, premises considered, Judge Marybelle L. Demot-Mariñas, former Presiding Judge of Branch 8, Regional Trial Court, La Trinidad, Benguet is found **GUILTY** of Gross Misconduct and Gross Inefficiency. Her retirement benefits, if any, are declared **FORFEITED** as penalty for her offenses, except accrued leave credits, in *lieu* of dismissal from service which the Court can no longer impose. She is likewise barred

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[15] *Dr. Hipe v. Judge Literato,* 686 Phil. 723, 735 (2012).

[16] See *OCA v. Grageda,* 706 Phil. 15, 21 (2013).

from re-employment in any branch or instrumentality of government, including government-owned or controlled corporations.

This Decision is immediately **EXECUTORY.**

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Mendoza, Reyes, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

EN BANC

[A.M. No. 10-4-19-SC. March 7, 2017]

RE: LETTER OF TONY Q. VALENCIANO, HOLDING OF RELIGIOUS RITUALS AT THE HALL OF JUSTICE BUILDING IN QUEZON CITY.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; DECLARATION OF PRINCIPLES; SEPARATION OF CHURCH AND STATE; THE STATE STILL RECOGNIZES THE INHERENT RIGHT OF THE PEOPLE TO HAVE SOME FORM OF BELIEF SYSTEM, WHETHER SUCH MAY BE BELIEF IN A SUPREME BEING, A CERTAIN WAY OF LIFE, OR EVEN AN OUTRIGHT REJECTION OF RELIGION.— Section 6, Article II of the 1987 Constitution provides: The separation of Church and State shall be inviolable. The Court once pronounced that "our history, not to speak of the history of mankind, has taught us that the union of church and state is prejudicial to both, for occasions might arise when the state will use the church, and the church the state, as a

weapon in the furtherance of their respective ends and aims." x x x This, notwithstanding, the State still recognizes the inherent right of the people to have some form of belief system, whether such may be belief in a Supreme Being, a certain way of life, or even an outright rejection of religion. Our very own Constitution recognizes the heterogeneity and religiosity of our people as reflected in *Imbong v. Ochoa*, x x x In *Aglipay v. Ruiz* (*Aglipay*), the Court acknowledged how religion could serve as a motivating force behind each person's actions: Religious freedom, however, as a constitutional mandate is not inhibition of profound reverence for religion and is not a denial of its influence in human affairs. Religion as a profession of faith to an active power that binds and elevates man to his Creator is recognized. And, in so far as it instills into the minds the purest principles of morality, its influence is deeply felt and highly appreciated. x x x Allowing religion to flourish is not contrary to the principle of separation of Church and State. In fact, these two principles are in perfect harmony with each other. x x x Clearly, allowing the citizens to practice their religion is not equivalent to a fusion of Church and State.

2. ID.; ID.; BILL OF RIGHTS; FREE EXERCISE AND ENJOYMENT OF RELIGIOUS PROFESSION AND WORSHIP; TWO-FOLD ASPECT OF THE RIGHT TO RELIGIOUS PROFESSION AND WORSHIP, EXPLAINED.— [T]he right to believe or not to believe has again been enshrined in Section 5, Article III of the 1987 Constitution: x x x Freedom of religion was accorded preferred status by the framers of our fundamental law. And this Court has consistently affirmed this preferred status, well aware that it is "designed to protect the broadest possible liberty of conscience, to allow each man to believe as his conscience directs, to profess his beliefs, and to live as he believes he ought to live, consistent with the liberty of others and with the common good." "The right to religious profession and worship has a two-fold aspect - freedom to believe and freedom to act on one's beliefs. The first is absolute as long as the belief is confined within the realm of thought. The second is subject to regulation where the belief is translated into external acts that affect the public welfare." Justice Isagani A. Cruz explained these two (2) concepts in this wise: (1) Freedom to Believe[.] The individual is free to believe (or disbelieve) as he pleases concerning the hereafter. He may indulge his own

theories about life and death; worship any god he chooses, or none at all; embrace or reject any religion; acknowledge the divinity of God or of any being that appeals to his reverence; recognize or deny the immortality of his soul - in fact, cherish any religious conviction as he and he alone sees fit. However absurd his beliefs may be to others, even if they be hostile and heretical to the majority, he has full freedom to believe as he pleases. He may not be required to prove his beliefs. x x x (2) Freedom to Act on One's Belief [.] But where the individual externalizes his beliefs in acts or omissions that affect the public, his freedom to do so becomes subject to the authority of the State. As great as this liberty may be, religious freedom, like all other rights guaranteed in the Constitution, can be enjoyed only with a proper regard for the rights of others.

3. **ID.; ID.; ID.; ID.; COMPELLING STATE INTEREST TEST; THE TEST IS PROPER WHERE THE CONDUCT IS INVOLVED FOR THE WHOLE GAMUT OF HUMAN CONDUCT HAS DIFFERENT EFFECTS ON THE STATE'S INTEREST; SOME EFFECTS MAY BE IMMEDIATE AND SHORT-TERM WHILE OTHERS DELAYED AND FAR-REACHING.—** Religious freedom, however, is not absolute. It cannot have its way if there is a compelling state interest. In *Estrada v. Escritor*, the Court expounded on the test as follows: The "compelling state interest" test is proper where conduct is involved for the whole gamut of human conduct has different effects on the state's interests: some effects may be immediate and short-term while others delayed and far-reaching. A test that would protect the interests of the state in preventing a substantive evil, whether immediate or delayed, is therefore necessary. However, not any interest of the state would suffice to prevail over the right to religious freedom as this is a fundamental right that enjoys a preferred position in the hierarchy of rights - "the most inalienable and sacred of all human rights", in the words of Jefferson. x x x As held in Sherbert, **only the gravest abuses, endangering paramount interests can limit this fundamental right**. A mere balancing of interests which balances a right with just a colorable state interest is therefore not appropriate. Instead, **only a compelling interest of the state can prevail over the fundamental right to religious liberty**. The test requires the state to carry a heavy burden, a compelling one, for to do

otherwise would allow the state to batter religion, especially the less powerful ones until they are destroyed. In determining which shall prevail between the state's interest and religious liberty, reasonableness shall be the guide. The "compelling state interest" serves the purpose of revering religious liberty while at the same time affording protection to the paramount interests of the state.

4. **ID.; ID.; ID.; ID.; POLICY OF ACCOMMODATION; AS LONG AS IT CAN BE SHOWN THAT THE EXERCISE OF THE RIGHT DOES NOT IMPAIR THE PUBLIC WELFARE, THE ATTEMPT OF THE STATE TO REGULATE OR PROHIBIT SUCH RIGHT WOULD BE AN UNCONSTITUTIONAL ENCROACHMENT.—** In order to give life to the constitutional right of freedom of religion, the State adopts a policy of accommodation. *Accommodation* is a recognition of the reality that some governmental measures may not be imposed on a certain portion of the population for the reason that these measures are contrary to their religious beliefs. As long as it can be shown that the exercise of the right does not impair the public welfare, the attempt of the State to regulate or prohibit such right would be an unconstitutional encroachment. In *Estrada v. Escritor*, the Court adopted a policy of benevolent neutrality: With religion looked upon with benevolence and not hostility, **benevolent neutrality allows accommodation of religion** under certain circumstances. **Accommodations are government policies that take religion specifically into account not to promote the government's favored form of religion, but to allow individuals and groups to exercise their religion without hindrance.** Their purpose or effect therefore is to remove a burden on, or facilitate the exercise of, a person's or institution's religion.

5. **ID.; ID.; ID.; ID.; NON-ESTABLISHMENT CLAUSE; IN A MINIMAL SENSE, THE CLAUSE MEANS THAT THE STATE CANNOT ESTABLISH OR SPONSOR AN OFFICIAL RELIGION.—** The non-establishment clause reinforces the wall of separation between Church and State. It simply means that the State cannot set up a Church; nor pass laws which aid one religion, aid all religion, or prefer one religion over another nor force nor influence a person to go to or remain away from church against his will or force him to profess a

belief or disbelief in any religion; that the state cannot punish a person for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance; that no tax in any amount, large or small, can be levied to support any religious activity or institution whatever they may be called or whatever form they may adopt or teach or practice religion; that the state cannot openly or secretly participate in the affairs of any religious organization or group and vice versa. Its minimal sense is that the state cannot establish or sponsor an official religion. In the same breath that the establishment clause restricts what the government can do with religion, it also limits what religious sects can or cannot do. They can neither cause the government to adopt their particular doctrines as policy for everyone, nor can they cause the government to restrict other groups. To do so, in simple terms, would cause the State to adhere to a particular religion and, thus, establish a state religion.

6. ID.; ID.; ID.; ID.; ESTABLISHMENT DISTINGUISHED FROM ACCOMMODATION.— Establishment entails a positive action on the part of the State. Accommodation, on the other hand, is passive. In the former, the State becomes involved through the use of government resources with the primary intention of setting up a state religion. In the latter, the State, without being entangled, merely gives consideration to its citizens who want to freely exercise their religion.

7. ID.; STATUTORY CONSTRUCTION; PRINCIPLE OF *NOSCITUR A SOCIIS*; WHERE A PARTICULAR WORD OR PHRASE IS AMBIGUOUS IN ITSELF OR IS EQUALLY SUSCEPTIBLE OF VARIOUS MEANINGS, ITS CORRECT CONSTRUCTION MAY BE MADE CLEAR AND SPECIFIC BY CONSIDERING THE COMPANY OF WORDS IN WHICH IT IS ASSOCIATED.— Under the principle of *noscitur a sociis*, where a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of words in which it is found or with which it is associated. This is because a word or phrase in a statute is always used in association with other words or phrases, and its meaning may, thus, be modified or restricted by the latter. The particular words, clauses and phrases should not be studied as detached and isolated expressions, but the

whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole. A statute must be so construed as to harmonize and give effect to all its provisions whenever possible.

8. ID.; LEGISLATURE; NO APPROPRIATION OF PUBLIC MONEY OR PROPERTY FOR THE BENEFIT OF ANY CHURCH; THE PROHIBITION CONTEMPLATES A SCENARIO WHERE THE APPROPRIATION IS PRIMARILY INTENDED FOR THE FURTHERANCE OF A PARTICULAR CHURCH; ELUCIDATED.— Section 29 (2), Article VI of the 1987 Constitution provides, "No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium." The word "apply" means "to use or employ for a particular purpose." "Appropriate" means "to prescribe a particular use for particular moneys or to designate or destine a fund or property for a distinct use, or for the payment of a particular demand." x x x Thus, the words "pay" and "employ" should be understood to mean that what is prohibited is the use of public money or property for the sole purpose of benefiting or supporting any church. The prohibition contemplates a scenario where the appropriation is primarily intended for the furtherance of a particular church. It has also been held that the aforecited constitutional provision "does not inhibit the use of public property for religious purposes when the religious character of such use is merely incidental to a temporary use which is available indiscriminately to the public in general." x x x Even the exception to the same provision bolsters this interpretation. The exception contemplates a situation wherein public funds are paid to a priest, preacher, minister, or other religious teacher, or dignitary because they rendered service in the armed forces, or to any penal institution, or government orphanage or leprosarium. That a priest belongs to a particular church and the latter may have benefited from the money he received is of no moment, for the purpose of the payment of public funds is merely to compensate the priest for services

rendered and for which other persons, who will perform the same services will also be compensated in the same manner.

LEONARDO-DE CASTRO, *J.*, *concurring opinion*:

POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RELIGIOUS FREEDOM CAN BE INVOKED AGAINST A FACIALLY-NEUTRAL LAW, REGULATION OR PRACTICE THAT UNDULY IMPAIRS SUCH FREEDOM; HOLDING OF MASSES DURING LUNCHBREAKS AT THE QUEZON CITY HALL PREMISES, NOT A VIOLATION OF RELIGIOUS FREEDOM.— [R]eligious freedom can be invoked not only against a facially-neutral law that unduly impairs such freedom but any regulation or practice that has the same effect unless it passes the accepted test or standard laid down by jurisprudence to protect the freedom of religion that occupies a preferred status in the hierarchy of human rights. Moreover, religion has an admitted moralizing influence that can contribute in the nurturing of high moral values among public servants which will have a beneficial effect in the discharge of their duties. At the outset, it must be stressed that the holding of the masses at the premises of the Quezon City Hall of Justice is not sponsored or supported by the said Court. It was at the own initiative of the Catholic faithful. Neither were the masses endorsed by the Court or any of its officials with the intention of propagating the Catholic religion to the detriment of other religions. The assumption that inequality of treatment is promoted has no factual basis. No person has complained that his/her religious practice has been discriminated upon. Hence, the holding of masses during lunch break would not amount to an excessive entanglement between the courts and religion.

JARDELEZA, *J.*, *concurring opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; RELIGIOUS FREEDOM; THE ESTABLISHMENT CLAUSE AND THE FREE EXERCISE CLAUSE ARE TWO CLAUSES WHICH COMPLEMENT EACH OTHER AND TOGETHER THEY PROMOTE THE FLOURISHING OF FREEDOM TO CHOOSE TO BELIEVE OR NOT TO BELIEVE IN THE

CONCEPT OF A SUPREME BEING.— Section 5 of the Bill of Rights of the Constitution x x x encapsulates the Religion Clauses of our Constitution—the Establishment Clause and the Free Exercise Clause. These two clauses complement each other, and together, they promote the flourishing of the freedom to choose to believe or not to believe in the concept of a supreme being. The Free Exercise Clause mandates an absolute protection of the freedom to believe. Thus, a person is free to worship any god he or she may choose or none at all. The difficulty and the beauty of the Free Exercise Clause, however, are found in its application in the realm of actions. While a person is free to believe what he or she may choose, he or she is not absolutely free to act on his or her beliefs. In constitutional adjudication, the challenge has often been the determination of whether a governmental act jeopardizes the freedom to act on one's belief, and whether the freedom to exercise a religion justifies an exemption from a law or government regulation. We have had the opportunity to rule on cases involving the Free Exercise Clause, and we have consistently endeavored to find the delicate balance between the secular interest of the state and the freedom of religion of the individual. On the other hand, the Establishment Clause, in its strict sense, bars a state from creating a state religion or espousing an official religion. There are, however, several gradations in the application of the Establishment Clause. It extends its prohibition not only to official acts establishing a state religion but also to government acts that have the effect of endorsing religion or favoring one over others. In *Iglesia Ni Cristo v. Court of Appeals*, we held that the Establishment Clause prohibits the state from leaning in favor of religion. "Neutrality alone is its fixed and immovable stance." x x x Our jurisprudence on the Religion Clauses reveal that in cases where this Court is called upon to perform the delicate balancing of protecting freedom of religion and upholding the legitimate interest of the state, we have always chosen not to espouse a blind adherence to an absolute separation of church and state but one that permits accommodation, whenever possible, in the greater pursuit of allowing freedom of religion to flourish.

2. ID.; ID.; ID.; ID.; BENEVOLENT NEUTRALITY IS AN APPROACH TO THE RELIGIOUS CLAUSES WHICH LEAVES ROOM FOR THE ACCOMODATION OF RELIGION.— Benevolent neutrality, as held in *Estrada*, is

an approach to the Religion Clauses which leaves room for the accommodation of religion. In explaining the concept of accommodation and how it is compatible with the Establishment Clause, we quoted the American case *Zorach v. Clauson*, which said— The First Amendment, however, does not say that, in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one or the other. x x x *Estrada* then proceeded to analyze our religion cases and declared that "the well-spring of Philippine jurisprudence on this subject is for the most part, benevolent neutrality which gives room for accommodation." x x x In my view, *Estrada* did not introduce anything new in applying benevolent neutrality in religion cases. Rather, it is an expression of the decades of jurisprudence that has persistently chosen a path where the separation of church and state may be used to create a space where religion is not stifled but is allowed to flourish. Of course there have been cases where we refused to grant a claim based on religion. In all these cases, however, this Court found interests that justify the refusal of a claim under the Religion Clauses. x x x This is the path that our jurisprudence on the Religion Clauses has taken. It is one that chooses accommodation, where there is no danger of breaching the wall of separation, instead of a blind and literal adherence to the concept of a separate church and state. To repeat, the Establishment Clause exists not for the sake of separation *per se* but as a tool to allow all religion (as well as the choice not to have one) to thrive and flourish. Our Establishment Clause, existing in the context of a unique Filipino culture, has developed its own narrative. It is this narrative that must permeate any understanding of what it means for our constitutional democracy to uphold the separation of church and state.

3. ID.; ID.; ID.; ID.; THE ESTABLISHMENT CLAUSE IS BREACHED WHEN THE STATE, BY USING A RELIGIOUS SYMBOL, EFFECTIVELY ENDORSES RELIGION; NOT PRESENT IN CASE AT BAR.— In the present case, this Court is asked to interpret a governmental institution's acquiescence to a religious practice and ascertain whether this acquiescence amounts to an endorsement or support for a particular region. x x x The Establishment Clause is breached when the state, by using a religious symbol, effectively endorses

religion. In determining if this endorsement exists, reliance has been made on history insofar as it reflects the intent of the drafters of the Religion Clause. The particular setting of the religious display is also taken into account in order to ascertain if it indeed amounts to the sponsorship of religion. It is within these contexts that this Court must proceed to apply the principles of the Establishment Clause to the present case. x x x Thus, historically, the government has accommodated religion in the public space. x x x In a very real sense, choosing not to interfere with what employees decide to do in their free time, whether it is to attend mass, pray, or participate in sports activities, provided it does not affect their work and the delivery of public service, carries an important secular purpose. It creates a satisfying working environment for our employees who can then perform their work with better efficiency. x x x This is, in truth, a matter of allowing employees to pursue an activity that, while it may relate to religion, ultimately benefits the interest of the Judiciary. It ensures that we keep employee morale high and reaffirms that we care enough about our employees and their spiritual pursuits. x x x I agree with the recommendation of the Court Administrator that Catholic images used for the Catholic mass must not be permanently stationed in the area. This is to avoid any impression that the Quezon City Trial Courts are endorsing a particular religion by allowing the building of a chapel exclusive for the use of Catholic employees. There is here a greater danger that we become entangled in the religious practice of Catholicism as well as greater likelihood that we be misconstrued to espouse Catholicism as a favored religion. This threatens to breach the wall of separation, and thus must be avoided.

LEONEN, *J.*, *dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; FREE EXERCISE AND ENJOYMENT OF RELIGIOUS PROFESSION AND WORSHIP; JURISPRUDENCE WHICH PROVIDES FOR EXCEPTIONS TO STATE REGULATION IS DIFFERENT FROM DOCTRINAL SUPPORT FOR ENDORSING A SPECIFIC RELIGION WITHOUT A SEPARATE OVERSEARCHING COMPELLING LAWFUL AND

SEPARATE STATE INTEREST; CASE AT BAR.— Allowing the exercise of religious rituals within government buildings violate both Section 5, Article III and Section 29(2), Article VI of the Constitution. x x x Justice Jardeleza is of the view that allowing the holding of religious rituals in our courts is an allowable accommodation under the freedom to worship clause. Accommodation, also termed "benevolent neutrality," was extensively discussed in *Estrada v. Escritor*. I disagree. The precedent cited is inappropriate. It is also not a binding precedent. Jurisprudence which provides for exceptions to State regulation is different from doctrinal support for endorsing a specific religion without a separate overarching compelling lawful and separate state interest. x x x *Escritor* involved accommodation or exceptions to a state policy. In this administrative matter, we create a policy that benefits a group of religions that have rituals. It will not benefit believers who do not have public rituals or a deity. It certainly will not benefit all beliefs including those who profess to atheism or agnosticism. *Escritor* therefore is not the proper precedent. x x x More importantly, benevolent neutrality in reality may turn out to be an insidious means for those who believe in a majority decision to maintain their dominance in the guise of neutral tolerance of all religions. x x x Benevolent neutrality in practice, thus, favors the already dominant.

2. **ID.; ID.; ID.; ID.; THE PROSCRIPTION AGAINST THE STATE'S ESTABLISHMENT OF RELIGION COVERS NOT ONLY OFFICIAL GOVERNMENT COMMUNICATION OF RELIGIOUS BELIEFS BUT ALSO THE SUPPORT AND ENDORSEMENT OF A RELIGIOUS ORGANIZATION OR ANY OF THEIR ACTIVITIES OR RITUALS.—** Section 5, Article III of the Constitution provides: x x x This provision articulates two fundamental duties of the State. The first is to respect the free exercise of any religious faith. The second is not to establish, endorse, or favor any religion. The parameters of the duty to respect the free exercise of any religion manifest in the context of a continuum. On the one hand, freedom to believe is absolute. On the other, physical manifestations of one's faith in the form of rituals will largely be tolerated except if they will tend to encroach or impede into the rights of others. x x x The proscription in Section 5, Article III of the Constitution against

the State's establishment of a religion covers not only official government communication of its religious beliefs. It likewise generally prohibits support and endorsement of a religious organization or any of their activities or rituals. The non-establishment clause can be appreciated in two basic ways. First, it can be a corollary to the Constitutional respect given to each individual's freedom of belief and freedom of exercise of one's religion. Second, it is also a restatement of the guarantee of equality of each citizen. That is, that no person shall be discriminated against on the basis of her or his creed or religious beliefs. Allowing masses to be held within Halls of Justice therefore have no other purpose *except* to allow a sect, or religious denomination to express its beliefs. The primary purpose of the policy that is favored by the majority of this Court is not secular in nature, but religious. This is contrary to the existing canons of our Constitutional law. Section 5, Article III does not allow the endorsement by the State of any religion. The only exception would be if such incidental endorsement of a religious exercise is in the context of a governmental act that satisfies the following three-part test: it has a "secular legislative purpose"; "its primary effect [is] that [which] neither advances nor inhibits religion"; and that it "must not foster 'an excessive entanglement with religion.'"

3. ID.; LEGISLATURE; NO APPROPRIATION OF PUBLIC MONEY OR PROPERTY FOR THE BENEFIT OF ANY CHURCH; THE RELIGIOUS USE OF PUBLIC PROPERTY IS PROSCRIBED IN ITS TOTALITY; CASE AT BAR.— Section 29(2), Article VI of the Constitution is straightforward and needs no statutory construction. The religious use of public property is proscribed in its totality. This proscription applies to *any* religion. This is especially so if the accommodation for the use of public property is principally, primarily, and exclusively only for a religious purpose. This holistic interpretation of the Constitution is more sensitive to those who disbelieve — the agonistics and the atheists — who are equally protected under the Constitution. It is also more sensitive to the concept that the state remains neutral in matters pertaining to faith: that no institutional religion, due to their dominance or resources, may have any form of advantage over another act of religious belief. x x x Allowing the celebration of Roman Catholic masses within court premises definitely is

not occasioned by a need to relieve their faithful from any burdensome effect. This case involves the State, through its employees, allowing the practice of religious rituals with *no other purpose except* to practice religious rituals in a public space. This cannot be done.

R E S O L U T I O N

MENDOZA, *J.*:

One of our fundamental differences lies in our chosen religion. Some put their faith in a god different from ours, while some may not believe in a god at all. Nevertheless, despite the inconveniences this difference may cause us, we must accept it unconditionally for only upon acceptance of the fact that we are different from each other will we learn to respect one another.

This controversy originated from a series of letters, written by Tony Q. Valenciano *(Valenciano)* and addressed to then Chief Justice Reynato S. Puno *(Chief Justice Puno)*.

In his first Letter,[1] dated January 6, 2009, Valenciano reported that the basement of the Hall of Justice of Quezon City *(QC)* had been converted into a Roman Catholic Chapel, complete with offertory table, images of Catholic religious icons, a canopy, an electric organ, and a projector. He believed that such practice violated the constitutional provision on the separation of Church and State and the constitutional prohibition against the appropriation of public money or property for the benefit of a sect, church, denomination, or any other system of religion.

Valenciano further averred that the holding of masses at the basement of the QC Hall of Justice showed that it tended to favor Catholic litigants; that the rehearsals of the choir caused great disturbance to other employees; that the public could no longer use the basement as resting place; that the employees and litigants of the Public Attorney's Office *(PAO)*, Branches 82 and 83 of the Regional Trial Court *(RTC)*, Legal Library,

[1] *Rollo*, pp. 20-22.

Philippine Mediation Center, and Records Section of the Office of the Clerk of Court *(OCC)* could not attend to their personal necessities such as going to the lavatories because they could not traverse the basement between 12:00 o'clock noontime and 1:15 o'clock in the afternoon; that the court employees became hostile toward each other as they vied for the right to read the epistle; and that the water supply in the entire building was cut off during the mass because the generator was turned off to ensure silence.

In his 1st Indorsement,[2] dated February 6, 2009, Chief Justice Puno referred Valenciano's letter to then Deputy Court Administrator *(DCA)* and Officer-in-Charge of the Office on Halls of Justice, Antonio H. Dujua *(DCA Dujua)*.

In turn, DCA Dujua, in his 1st Indorsement,[3] dated February 11, 2009, referred the letter to Executive Judge Teodoro A. Bay *(Judge Bay)* of the RTC and to Executive Judge Luis Zenon Q. Maceren *(Judge Maceren)* of the Metropolitan Trial Court *(MeTC)* for their respective comments.

In his March 6, 2009 Letter,[4] addressed to DCA Dujua, Judge Maceren clarified that the basement of the QC Hall of Justice was known as the prayer corner. He opined that the use of the said area for holding masses did not violate the constitutional prohibition against the use of public property for religious purposes because the religious character of such use was merely incidental to a temporary use.

In his Memorandum,[5] dated March 10, 2009, Judge Bay manifested that he was due to compulsorily retire on April 29, 2009, and he was taking a leave of absence prior to such date to concentrate in resolving cases submitted for decision before his sala and requested that then Vice-Executive Judge Jaime

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[2] *Id*. at 2.

[3] *Id.* at 23.

[4] *Id*. at 28-30.

[5] *Id*. at 31-33.

N. Salazar *(Judge Salazar)* be assigned to further investigate, study, and make recommendations on the matter raised by Valenciano.

In the meantime, Judge Bay recommended that, pending the final resolution of the case, daily masses be permitted to continue, provided that: (1) the mass be limited to thirty (30) minutes; (2) no loud singing be allowed so as not to disturb others; and (3) the inconveniences caused by the mass be addressed.

In his 1st Indorsement,[6] dated May 27, 2009, Chief Justice Puno referred another letter of Valenciano, dated May 13, 2009, to DCA Dujua for appropriate action, as he complained that masses continued to be held at the basement of the QC Hall of Justice.

On March 23, 2010, Valenciano wrote another letter,[7] praying that rules be promulgated by the Court to put a stop to the holding of Catholic masses, or any other religious rituals, at the QC Hall of Justice and in all other halls of justice in the country.

In its June 22, 2010 Resolution,[8] the Court noted the March 23, 2010 letter of Valenciano and referred the matter to the Office of the Court Administrator *(OCA)* for evaluation, report and recommendation.

Thus, in its 1st Indorsement,[9] dated September 6, 2010, the OCA, through then Assistant Court Administrator *(ACA)* Jenny Lind R. Aldecoa-Delorino (now Deputy Court Administrator), referred the letters of Valenciano to the incumbent RTC Executive Judge Fernando T. Sagun, Jr. *(Judge Sagun, Jr.)* and incumbent MeTC Executive Judge Caridad M. Walse-Lutero *(Judge Lutero)*.

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[6] *Id.* at 3.

[7] *Id*. at 34.

[8] *Id*. at 6-7.

[9] *Id.* at 8.

In his Letter-Comment,[10] dated September 9, 2010, Judge Sagun, Jr. informed the Court that his office had already implemented measures to address Valenciano's complaints. He reported that masses were shortened to a little over thirty (30) minutes; that it was only during special holy days of obligation when the celebration of mass went beyond one (1) o'clock in the afternoon; that the pathways leading to the lavatories were open and could be used without obstruction; that there was never an instance where the actions of court personnel, who were vying to read the epistle during mass, caused back-biting and irritation among themselves; that the water generator had been broken beyond repair and decommissioned since December 2009; and that the court employees prepared for the mass before the day officially started, so that the performance of their official duties in court was not hampered.

In her letter,[11] Judge Lutero reported that Catholic masses were being held only during lunch breaks and did not disturb court proceedings; that the basement of the QC Hall of Justice could still be used as waiting area for the public; that court personnel and the public were never physically prevented from reaching the lavatories during mass as there was a clear path from the public offices leading to the comfort rooms; that water service interruptions were caused by maintenance problems and not because the water pump was being shut off during mass; and that the elevators could not be used during mass because elevator attendants took their lunch break from twelve (12) o'clock to one (1) o'clock in the afternoon.

Judge Lutero opined that it is not the conduct of masses in public places which the Constitution prohibited, but the passage of laws or the use of public funds for the purpose of establishing a religion or prohibiting the free exercise thereof. She conveyed the fact that no law or rule had been passed and that no public funds had been appropriated or used to support the celebration

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[10] *Id.* at 10-12.

[11] *Id*. at 13-16.

of masses. She added that the holding of Catholic masses did not mean that Catholics had better chances of obtaining favorable resolutions from the court.

Accordingly, Judge Lutero recommended that the holding of masses at the basement of the QC Hall of Justice be allowed to continue considering that it was not inimical to the interests of the court employees and the public.

The OCA Report and Recommendation

In its Memorandum,[12] dated August 7, 2014, the OCA believed that the practical inconveniences cited by Valenciano were unfounded. It, thus, recommended that his letter-complaints, dated January 6, 2009, May 13, 2009 and March 23, 2010, be dismissed for lack of merit and that the RTC and MeTC Executive Judges of QC be directed to closely regulate and monitor the holding of masses and other religious practices within the premises of the QC Hall of Justice.

The OCA opined that the principle of separation of Church and State, particularly with reference to the Establishment Clause, ought not to be interpreted according to the rigid standards of separation; that the neutrality of the State on religion should be benevolent because religion was an ingrained part of society and played an important role in it; and that the State, therefore, instead of being belligerent (in the case of Strict Separation) or being aloof (in the case of Strict Neutrality) towards religion should instead interact and forbear.[13]

The OCA advanced the view that the standard of Benevolent Neutrality/Accommodation was espoused because the principal religion clauses in our Constitution were not limited to the Establishment Clause, which created a wall between the Church and the State, but was quickly followed by the declaration of the Free Exercise Clause, which protected the right of the people

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[12] *Id.* at 52-67.

[13] *Id.* at 60.

to practice their religion. In effect, the standard of Benevolent Neutrality/Accommodation balanced the interest of the State through the Establishment Clause, and the interest and right of the individual to freely exercise his religion as guaranteed by the Free Exercise Clause.[14]

The OCA observed that the present controversy did not involve a national or local law or regulation in conflict with the Free Exercise Clause. On the contrary, Valenciano was merely questioning the propriety of holding religious masses at the basement of the QC Hall of Justice, which was nothing more than an issue of whether the said religious practice could be accommodated or not. It ended up concluding that based on prevailing jurisprudence, as well as the interpretations given to the religion clauses of the 1987 Constitution, there was nothing constitutionally abhorrent in allowing the continuation of the masses.[15]

The OCA added that by allowing or accommodating the celebration of Catholic masses within the premises of the QC Hall of Justice, the Court could not be said to have established Roman Catholicism as an official religion or to have endorsed the said religion, for the reason that it also allowed other religious denominations to practice their religion within the courthouses.[16]

ISSUE

WHETHER THE HOLDING OF MASSES AT THE BASEMENT OF THE QUEZON CITY HALL OF JUSTICE VIOLATES THE CONSTITUTIONAL PRINCIPLE OF SEPARATION OF CHURCH AND STATE AS WELL AS THE CONSTITUTIONAL PROHIBITION AGAINST APPROPRIATION OF PUBLIC MONEY OR PROPERTY FOR THE BENEFIT OF ANY SECT, CHURCH, DENOMINATION, SECTARIAN INSTITUTION, OR SYSTEM OF RELIGION.

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[14] *Id.* at 61-62.

[15] *Id.* at 62.

[16] *Id.* at 63.

The Court's Ruling

The Court agrees with the findings and recommendation of the OCA and denies the prayer of Valenciano that the holding of religious rituals of any of the world's religions in the QC Hall of Justice or any halls of justice all over the country be prohibited.

The Holding of Religious Rituals in the Halls of Justice does not Amount to a Union of Church and State

As earlier stated, Valenciano is against the holding of religious rituals in the halls of justice on the ground that it violates the constitutional provision on the separation of Church and State and the constitutional prohibition against the appropriation of public money or property for the benefit of a sect, church, denomination, or any other system of religion. Indeed, Section 6, Article II of the 1987 Constitution provides:

The separation of Church and State shall be inviolable.[17]

The Court once pronounced that "our history, not to speak of the history of mankind, has taught us that the union of church and state is prejudicial to both, for occasions might arise when the state will use the church, and the church the state, as a weapon in the furtherance of their respective ends and aims."[18]

Justice Isagani Cruz expounded on this doctrine, *viz.:*

The rationale of the rule is summed up in the familiar saying, "Strong fences make good neighbors." The idea is to delineate the boundaries between the two institutions and, thus, avoid encroachments by one against the other because of a misunderstanding of the limits of their respective exclusive jurisdictions. The demarcation line calls on the entities to "render therefore unto Caesar the things that are Caesar's and unto God the things that are God's."[19]

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[17] Const. (1987), Article II, Sec. 6.

[18] *Aglipay v. Ruiz,* 64 Phil. 201, 205 (1937).

[19] Cruz, *Philippine Political Law* (2002), p. 68.

This, notwithstanding, the State still recognizes the inherent right of the people to have some form of belief system, whether such may be belief in a Supreme Being, a certain way of life, or even an outright rejection of religion. Our very own Constitution recognizes the heterogeneity and religiosity of our people as reflected in *Imbong v. Ochoa*,[20] as follows:

> At the outset, it cannot be denied that we all live in a heterogeneous society. It is made up of people of diverse ethnic, cultural and religious beliefs and backgrounds. History has shown us that our government, in law and in practice, has allowed these various religious, cultural, social and racial groups to thrive in a single society together. It has embraced minority groups and is tolerant towards all — the religious people of different sects and the non-believers. The undisputed fact is that our people generally believe in a deity, whatever they conceived Him to be, and to Whom they called for guidance and enlightenment in crafting our fundamental law. Thus, the preamble of the present Constitution reads:
>
> > We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society, and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity, the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution.
>
> **The Filipino people in *"imploring the aid of Almighty God"* manifested their spirituality innate in our nature and consciousness as a people, shaped by tradition and historical experience. As this is embodied in the preamble, it means that the State recognizes with respect the influence of religion in so far as it instills into the mind the purest principles of morality.** Moreover, in recognition of the contributions of religion to society, the 1935, 1973 and 1987 Constitutions **contain benevolent and accommodating provisions** towards religions such as tax exemption of church property, salary of religious officers in government institutions, and optional religious instructions in public schools. [Emphases supplied]

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[20] 732 Phil. 1 (2014).

In *Aglipay v. Ruiz*[21] *(Aglipay),* the Court acknowledged how religion could serve as a motivating force behind each person's actions:

> Religious freedom, however, as a constitutional mandate is not inhibition of profound reverence for religion and is not a denial of its influence in human affairs. Religion as a profession of faith to an active power that binds and elevates man to his Creator is recognized. And, in so far as it instills into the minds the purest principles of morality, its influence is deeply felt and highly appreciated. **When the Filipino people, in the preamble of their Constitution, implored "the aid of *Divine Providence*, in order to establish a government that shall embody their ideals, conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence under a regime of justice, liberty and democracy," they thereby manifested their intense religious nature and placed unfaltering reliance upon Him who guides the destinies of men and nations**. The elevating influence of religion in human society is recognized here as elsewhere. In fact, certain general concessions are indiscriminately accorded to religious sects and denominations. Our Constitution and laws exempt from taxation properties devoted exclusively to religious purposes (sec. 14, subsec. 3, Art. VI, Constitution of the Philippines and sec. 1, subsec. Ordinance appended thereto; Assessment Law, sec. 344, par [c], Adm. Code) sectarian aid is not prohibited when a priest, preacher, minister or other religious teacher or dignitary as such is assigned to the armed forces or to any penal institution, orphanage or leprosarium xxx. Optional religious instruction in the public schools is by constitutional mandate allowed xxx. Thursday and Friday of Holy Week, Thanksgiving Day, Christmas Day, and Sundays are made legal holidays (sec. 29, Adm. Code) because of the secular idea that their observance is conducive to beneficial moral results. The law allows divorce but punishes polygamy and bigamy; and certain crimes against religious worship are considered crimes against the fundamental laws of the state xxx.[22] [Emphasis supplied]

Thus, the right to believe or not to believe has again been enshrined in Section 5, Article III of the 1987 Constitution:

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[21] *Supra* note 18.

[22] *Id*. at 206-207.

Section 5. xxx. The **free exercise and enjoyment of religious profession and worship**, without discrimination or preference, shall forever be allowed. xxx.

Free Exercise Clause

Freedom of religion was accorded preferred status by the framers of our fundamental law. And this Court has consistently affirmed this preferred status, well aware that it is "designed to protect the broadest possible liberty of conscience, to allow each man to believe as his conscience directs, to profess his beliefs, and to live as he believes he ought to live, consistent with the liberty of others and with the common good."[23]

"The right to religious profession and worship has a two-fold aspect - freedom to believe and freedom to act on one's beliefs. The first is absolute as long as the belief is confined within the realm of thought. The second is subject to regulation where the belief is translated into external acts that affect the public welfare."[24] Justice Isagani A. Cruz explained these two (2) concepts in this wise:

(1) Freedom to Believe

The individual is free to believe (or disbelieve) as he pleases concerning the hereafter. He may indulge his own theories about life and death; worship any god he chooses, or none at all; embrace or reject any religion; acknowledge the divinity of God or of any being that appeals to his reverence; recognize or deny the immortality of his soul - in fact, cherish any religious conviction as he and he alone sees fit. However absurd his beliefs may be to others, even if they be hostile and heretical to the majority, he has full freedom to believe as he pleases. He may not be required to prove his beliefs. He may not be punished for his inability to do so. Religion, after all, is a matter of faith. "Men may believe what they cannot prove." Every one has a right to his beliefs and he may not be called to account because he cannot prove what he believes.

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[23] *Islamic Da'wah Council of the Philippines, Inc. v. Executive Secretary*, 453 Phil. 440, 449 (2003). [Citations omitted]

[24] Cruz, *Constitutional Law* (2007), p. 188.

(2) Freedom to Act on One's Beliefs

But where the individual externalizes his beliefs in acts or omissions that affect the public, his freedom to do so becomes subject to the authority of the State. As great as this liberty may be, religious freedom, like all other rights guaranteed in the Constitution, can be enjoyed only with a proper regard for the rights of others.

It is error to think that the mere invocation of religious freedom will stalemate the State and render it impotent in protecting the general welfare. The inherent police power can be exercised to prevent religious practices inimical to society. And this is true even if such practices are pursued out of sincere religious conviction and not merely for the purpose of evading the reasonable requirements or prohibitions of the law.

Justice Frankfurter put it succinctly: "The constitutional provision on religious freedom terminated disabilities, it did not create new privileges. It gave religious liberty, not civil immunity. Its essence is freedom from conformity to religious dogma, not freedom from conformity to law because of religious dogma."[25]

Allowing religion to flourish is not contrary to the principle of separation of Church and State. In fact, these two principles are in perfect harmony with each other.

The State is aware of the existence of religious movements whose members believe in the divinity of Jose Rizal. Yet, it does not implement measures to suppress the said religious sects. Such inaction or indifference on the part of the State gives meaning to the separation of Church and State, and at the same time, recognizes the religious freedom of the members of these sects to worship their own Supreme Being.

As pointed out by Judge Lutero, "the Roman Catholics express their worship through the holy mass and to stop these would be tantamount to repressing the right to the free exercise of their religion. Our Muslim brethren, who are government employees, are allowed to worship their Allah even during office hours inside their own offices. The Seventh Day Adventists

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[25] Cruz, *Constitutional Law* (2007), pp. 188-189.

are exempted from rendering Saturday duty because their religion prohibits them from working on a Saturday. Even Christians have been allowed to conduct their own bible studies in their own offices. All these have been allowed in respect of the workers' right to the free exercise of their religion. xxx"[26]

Clearly, allowing the citizens to practice their religion is not equivalent to a fusion of Church and State.

No Compelling State Interest

Religious freedom, however, is not absolute. It cannot have its way if there is a compelling state interest. To successfully invoke compelling state interest, it must be demonstrated that the masses in the QC Hall of Justice unduly disrupt the delivery of public services or affect the judges and employees in the performance of their official functions. In *Estrada v. Escritor,*[27] the Court expounded on the test as follows:

> The "compelling state interest" test is proper where conduct is involved for the whole gamut of human conduct has different effects on the state's interests: some effects may be immediate and short-term while others delayed and far-reaching. A test that would protect the interests of the state in preventing a substantive evil, whether immediate or delayed, is therefore necessary. However, not any interest of the state would suffice to prevail over the right to religious freedom as this is a fundamental right that enjoys a preferred position in the hierarchy of rights - "the most inalienable and sacred of all human rights", in the words of Jefferson. This right is sacred for an invocation of the Free Exercise Clause is an appeal to a higher sovereignty. The entire constitutional order of limited government is premised upon an acknowledgment of such higher sovereignty, thus the Filipinos implore the "aid of Almighty God in order to build a just and humane society and establish a government." As held in Sherbert, **only the gravest abuses, endangering paramount interests can limit this fundamental right.** A mere balancing of interests which balances a right with just a colorable state interest is therefore not appropriate. Instead, **only a compelling interest of the state can prevail over**

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[26] *Rollo*, p. 14.

[27] 455 Phil. 411, 577-588 (2006).

the fundamental right to religious liberty. The test requires the state to carry a heavy burden, a compelling one, for to do otherwise would allow the state to batter religion, especially the less powerful ones until they are destroyed. In determining which shall prevail between the state's interest and religious liberty, reasonableness shall be the guide. The "compelling state interest" serves the purpose of revering religious liberty while at the same time affording protection to the paramount interests of the state. This was the test used in Sherbert which involved conduct, i.e. refusal to work on Saturdays. In the end, the "compelling state interest" test, by upholding the paramount interests of the state, seeks to protect the very state, without which, religious liberty will not be preserved.[137] [Citations omitted] [Emphases supplied]

As reported by the Executive Judges of Quezon City, the masses were being conducted only during noon breaks and were not disruptive of public services. The court proceedings were not being distracted or interrupted and that the performance of the judiciary employees were not being adversely affected. Moreover, no Civil Service rules were being violated. As there has been no detrimental effect on the public service or prejudice to the State, there is simply no state interest compelling enough to prohibit the exercise of religious freedom in the halls of justice.

In fact, the Civil Service Commission *(CSC)* was more lenient or tolerant. On November 13, 1981, the CSC came out with Resolution No. 81-1277, which provided, among others, that "during Friday, the Muslim pray day, Muslims are excused from work from 10:00 o'clock in the morning to 2:00 o'clock in the afternoon." The Court struck this down[28] as not sanctioned by the law. It wrote:

To allow the Muslim employees in the Judiciary to be excused from work from 10:00 a.m. to 2:00 p.m. every Friday (Muslim Prayer Day) during the entire calendar year would mean a diminution of the prescribed government working hours. For then, they would be rendering service twelve (12) hours less than that required by the

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[28] *Re: Request of Muslim Employees in the Different Courts in Iligan City (Re: Office Hours),* 514 Phil. 31, 40 (2005).

civil service rules for each month. Further, this would encourage other religious denominations to request for similar treatment.

The performance of religious practices, whether by the Muslim employees or those belonging to other religious denominations, should not prejudice the courts and the public. Indeed, the exercise of religious freedom does not exempt anyone from compliance with reasonable requirements of the law, including civil service laws.

Accommodation, Not Establishment of Religion

In order to give life to the constitutional right of freedom of religion, the State adopts a policy of accommodation. *Accommodation* is a recognition of the reality that some governmental measures may not be imposed on a certain portion of the population for the reason that these measures are contrary to their religious beliefs. As long as it can be shown that the exercise of the right does not impair the public welfare, the attempt of the State to regulate or prohibit such right would be an unconstitutional encroachment.[29]

In *Estrada v. Escritor*,[30] the Court adopted a policy of benevolent neutrality:

> With religion looked upon with benevolence and not hostility, **benevolent neutrality allows accommodation of religion** under certain circumstances. **Accommodations are government policies that take religion specifically into account not to promote the government's favored form of religion, but to allow individuals and groups to exercise their religion without hindrance.** Their purpose or effect therefore is to remove a burden on, or facilitate the exercise of, a person's or institution's religion. As Justice Brennan explained, the "government [may] take religion into account . . . to exempt, when possible, from generally applicable governmental regulation individuals whose religious beliefs and practices would otherwise thereby be infringed, or **to create without state involvement an atmosphere in which voluntary religious exercise may flourish**." [Emphases supplied]

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[29] See Cruz, *Constitutional Law* (2007), p. 189.

[30] *Estrada v. Escritor*, *supra* note 27, at 522-523.

In *Victoriano v. Elizalde Rope Workers Union*,[31] the Court upheld the exemption of members of *Iglesia ni Cristo* from the coverage of a closed shop agreement between their employer and a union, because it would violate the teaching of their church not to affiliate with a labor organization.

In *Ebralinag v. Division Superintendent of Schools of Cebu*,[32] the petitioners, who were members of the *Jehovah's Witnesses*, refused to salute the flag, sing the national anthem, and recite the patriotic pledge for it is their belief that those were acts of worship or religious devotion, which they could not conscientiously give to anyone or anything except God. The Court accommodated them and granted them an exemption from observing the flag ceremony out of respect for their religious beliefs.

Further, several laws have been enacted to accommodate religion. The Revised Administrative Code of 1987 has declared Maundy Thursday, Good Friday, and Christmas Day as regular holidays. Republic Act *(R.A.)* No. 9177 proclaimed the first day of *Shawwal*, the tenth month of the Islamic Calendar, a national holiday for the observance of *Eidul Fitr* (the end of Ramadan). R.A. No. 9849 declared the tenth day of *Zhul Hijja*, the twelfth month of the Islamic Calendar, a national holiday for the observance of *Eidul Adha*. Presidential Decree *(P.D.)* No. 1083, otherwise known as the Code of Muslim Personal Laws of the Philippines, expressly allows a Filipino Muslim to have more than one (1) wife and exempts him from the crime of bigamy punishable under Revised Penal Code *(RPC)*. The same Code allows Muslims to have divorce.[33]

As to Muslims in government offices, Section 3 of P.D. No. 291, as amended by P.D. No. 322, provides:

Sec. 3. (a) During the fasting season on the month of Ramadan, all Muslim employees in the national government, government-owned

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[31] 158 Phil. 60 (1974).

[32] G.R. No. 95770, March 1, 1993, 219 SCRA 256.

[33] *Rollo*, p. 61.

or controlled corporations, provinces, cities, municipalities and other instrumentalities shall observe office hours from seven-thirty in the morning (7:30 a.m.) to three-thirty in the afternoon (3:30 p.m.) without lunch break or coffee breaks, and that there shall be no diminution of salary or wages, provided, that the employee who is not fasting is not entitled to the benefit of this provision.

Pursuant thereto, the CSC promulgated Resolution No. 81-1277, dated November 13, 1981, which reads in part:

2. During "Ramadan" the Fasting month (30 days) of the Muslims, the Civil Service official time of 8 o'clock to 12 o'clock and 1 o'clock to 5 o'clock is hereby modified to 7:30 A.M. to 3:30 P.M. without noon break and the difference of 2 hours is not counted as undertime.

Following the decree, in *Re: Request of Muslim Employees in the Different Courts in Iligan City (Re: Office Hours)*,[34] the Court recognized that the observance of Ramadan as integral to the Islamic faith and allowed *Muslim* employees in the Judiciary to hold flexible office hours from 7:30 o'clock in the morning to 3:30 o'clock in the afternoon without any break during the period. This is a clear case of accommodation because Section 5, Rule XVII of the Omnibus Rules Implementing Book V of E.O. No. 292, enjoins all civil servants, of whatever religious denomination, to render public service of no less than eight (8) hours a day or forty (40) hours a week.

Non-Establishment Clause

On the opposite side of the spectrum is the constitutional mandate that "*no law shall be made respecting an establishment of religion*,"[35] otherwise known as the non-establishment clause. Indeed, there is a thin line between accommodation and establishment, which makes it even more imperative to understand each of these concepts by placing them in the Filipino society's perspective.

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[34] *Supra* note 28.

[35] Section 5, Article III, 1987 Constitution.

The non-establishment clause reinforces the wall of separation between Church and State. It simply means that the State cannot set up a Church; nor pass laws which aid one religion, aid all religion, or prefer one religion over another nor force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion; that the state cannot punish a person for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance; that no tax in any amount, large or small, can be levied to support any religious activity or institution whatever they may be called or whatever form they may adopt or teach or practice religion; that the state cannot openly or secretly participate in the affairs of any religious organization or group and vice versa.[36] Its minimal sense is that the state cannot establish or sponsor an official religion.[37]

In the same breath that the establishment clause restricts what the government can do with religion, it also limits what religious sects can or cannot do. They can neither cause the government to adopt their particular doctrines as policy for everyone, nor can they cause the government to restrict other groups. To do so, in simple terms, would cause the State to adhere to a particular religion and, thus, establish a state religion.[38]

Father Bernas further elaborated on this matter, as follows:

"In effect, what non-establishment calls for is government neutrality in religious matters. Such government neutrality may be summarized in four general propositions: (1) Government must not prefer one religion over another or religion over irreligion because such preference would violate voluntarism and breed dissension; (2) Government funds must not be applied to religious purposes because this too would violate voluntarism and breed interfaith dissension; (3) Government action must not aid religion because this too can violate voluntarism and breed interfaith dissension; [and] (4) Government action must

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[36] *Everson v. Board of Education*, 330 U.S. 1.

[37] Bernas, *The 1987 Constitution Of The Philippines*, 2009 Ed., p. 345.

[38] *Imbong v. Ochoa, supra* note 20.

not result in excessive entanglement with religion because this too can violate voluntarism and breed interfaith dissension."[39]

Establishment entails a positive action on the part of the State. Accommodation, on the other hand, is passive. In the former, the State becomes involved through the use of government resources with the primary intention of setting up a state religion. In the latter, the State, without being entangled, merely gives consideration to its citizens who want to freely exercise their religion.

In a September 12, 2003 Memorandum for Chief Justice Hilario G. Davide, Jr., the Office of the Chief Attorney recommended to deny, on constitutional grounds, the request of Rev. Fr. Carlo M. Ilagan to hold a one-day vigil in honor of the Our Lady of Caysasay within the premises of the Court. Such controversy must be distinguished from the present issue in that with respect to the former, a Catholic priest was the one who requested for the vigil. Moreover, in that case, the vigil would take one (1) whole working day; whereas in this case, the masses are held at the initiative of Catholic employees and only during the thirty-minute lunch break.

Guided by the foregoing, it is our considered view that the holding of Catholic masses at the basement of the QC Hall of Justice *is not a case of establishment, but merely accommodation. First*, there is no law, ordinance or circular issued by any duly constitutive authorities expressly mandating that judiciary employees attend the Catholic masses at the basement. *Second*, when judiciary employees attend the masses to profess their faith, it is at their own initiative as they are there on their own free will and volition, without any coercion from the judges or administrative officers. *Third,* no government funds are being spent because the lightings and airconditioning continue to be operational even if there are no religious rituals there. *Fourth,* the basement has neither been converted into a Roman Catholic

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[39] Bernas, *The 1987 Constitution Of The Philippines*, 2009 Ed., p. 346.

chapel nor has it been permanently appropriated for the exclusive use of its faithful. *Fifth*, the allowance of the masses has not prejudiced other religions.

No Appropriation of Public Money or Property for the Benefit of any Church

Section 29 (2), Article VI of the 1987 Constitution provides, "No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium."

The word "apply" means "to use or employ for a particular purpose."[40] "Appropriate" means "to prescribe a particular use for particular moneys or to designate or destine a fund or property for a distinct use, or for the payment of a particular demand."[41]

Under the principle of *noscitur a sociis*, where a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of words in which it is found or with which it is associated. This is because a word or phrase in a statute is always used in association with other words or phrases, and its meaning may, thus, be modified or restricted by the latter. The particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole. A statute must be so construed as to harmonize and give effect to all its provisions whenever possible.[42]

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[40] *Black's Law Dictionary* (Fifth Ed.), p. 91.

[41] *Black's Law Dictionary* (Fifth Ed.), p. 93.

[42] *Chavez v. Judicial and Bar Council,* 691 Phil. 173, 200 (2012).

Thus, the words "pay" and "employ" should be understood to mean that what is prohibited is the use of public money or property for the sole purpose of benefiting or supporting any church. The prohibition contemplates a scenario where the appropriation is primarily intended for the furtherance of a particular church.

It has also been held that the aforecited constitutional provision "does not inhibit the use of public property for religious purposes when the religious character of such use is merely incidental to a temporary use which is available indiscriminately to the public in general." Hence, a public street may be used for a religious procession even as it is available for a civic parade, in the same way that a public plaza is not barred to a religious rally if it may also be used for a political assemblage.[43]

In relation thereto, the phrase "directly or indirectly" refers to the manner of appropriation of public money or property, not as to whether a particular act involves a direct or a mere incidental benefit to any church. Otherwise, the framers of the Constitution would have placed it before "use, benefit or support" to describe the same. Even the exception to the same provision bolsters this interpretation. The exception contemplates a situation wherein public funds are paid to a priest, preacher, minister, or other religious teacher, or dignitary because they rendered service in the armed forces, or to any penal institution, or government orphanage or leprosarium. That a priest belongs to a particular church and the latter may have benefited from the money he received is of no moment, for the purpose of the payment of public funds is merely to compensate the priest for services rendered and for which other persons, who will perform the same services will also be compensated in the same manner.

Ut magis valeat quam pereat. The Constitution is to be interpreted as a whole.[44] As such, the foregoing interpretation finds support in the Establishment Clause, which is as clear as

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[43] Cruz, *Philippine Political Law* (2002), pp. 174-175.

[44] *Francisco v. House of Representatives*, 460 Phil. 830, 886 (2003).

daylight in stating that what is proscribed is the passage of any law which tends to establish a religion, not merely to accommodate the free exercise thereof.

The Constitution even grants tax exemption to properties actually, directly and exclusively devoted to religious purposes.[45] Certainly, this benefits the religious sects for a portion of what could have been collected for the benefit of the public is surrendered in their favor.

In *Manosca v. CA*,[46] a parcel of land located in Taguig was determined by the National Historical Institute to be the birthsite of Felix Y. Manalo, the founder of *Iglesia ni Cristo*. The Republic then sought to expropriate the said property. The exercise of the power of eminent domain was questioned on the ground that it would only benefit members of *Iglesia ni Cristo*. The Court upheld the legality of the expropriation, *viz.*:

> The practical reality that greater benefit may be derived by members of the *Iglesia ni Cristo* than by most others could well be true but such a peculiar advantage still remains to be **merely incidental and secondary in nature**.[47] [Emphasis supplied]

Again, in *Aglipay,* the issuing and selling of postage stamps commemorative of the Thirty-third International Eucharistic Congress was assailed on the ground that it violated the constitutional prohibition against the appropriation of public money or property for the benefit of any church. In ruling that there was no such violation, the Court held:

> It is obvious that while the issuance and sale of the stamps in question may be said to be inseparably linked with an event of a religious character, the resulting propaganda, if any, received by the Roman Catholic Church, was not the aim and purpose of the Government. We are of the opinion that the Government should not be embarrassed in its activities simply because of incidental results, more or less

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[45] Section 28 (3), Art. VI, 1987 Constitution.

[46] 322 Phil. 442 (1996).

[47] *Id.* at 453.

religious in character, if the purpose had in view is one which could legitimately be undertaken by appropriate legislation. **The main purpose should not be frustrated by its subordination to mere incidental results not contemplated**.[48] [Emphasis supplied]

Here, the basement of the QC Hall of Justice is not appropriated, applied or employed for the sole purpose of supporting the Roman Catholics.

Further, it has not been converted into a Roman Catholic chapel for the exclusive use of its faithful contrary to the claim of Valenciano. Judge Maceren reported that the basement is also being used as a public waiting area for most of the day and a meeting place for different employee organizations. The use of the area for holding masses is limited to lunch break period from twelve (12) o'clock to one (1) o'clock in the afternoon. Further, Judge Sagun, Jr. related that masses run for just a little over thirty (30) minutes. It is, therefore, clear that no undue religious bias is being committed when the subject basement is allowed to be temporarily used by the Catholics to celebrate mass, as the same area can be used by other groups of people and for other purposes.[49] Thus, the basement of the QC Hall of Justice has remained to be a public property devoted for public use because the holding of Catholic masses therein is a mere incidental consequence of its primary purpose.

Conclusion

Directing the Executive Judges of the RTC and MeTC to regulate and closely monitor the holding of masses and other religious practices within the courts does not promote excessive collaboration between courts and various religions. On the contrary, this is necessary to ensure that there would be no excessive entanglement.

To disallow the holding of religious rituals within halls of justice would set a dangerous precedent and commence a domino effect. Strict separation, rather than benevolent neutrality/

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[48] *Supra* note 18, at 209-210.

[49] *Rollo*, p. 63.

accommodation, would be the norm. Thus, the establishment of Shari'a courts, the National Commission for Muslim Filipinos, and the exception of Muslims from the provisions of the RPC relative to the crime of bigamy would all be rendered nugatory because of strict separation. The exception of members of *Iglesia ni Cristo* from joining a union or the non-compulsion recognized in favor of members of the Jehovah's Witnesses from doing certain gestures during the flag ceremony, will all go down the drain simply because we insist on strict separation.

That the holding of masses at the basement of the QC Hall of Justice may offend non-Catholics is no reason to proscribe it. Our Constitution ensures and mandates an unconditional tolerance, without regard to whether those who seek to profess their faith belong to the majority or to the minority. It is emphatic in saying that "the free exercise and enjoyment of religious profession and worship shall be without discrimination or preference." Otherwise, accommodation or tolerance would just be mere lip service.

One cannot espouse that the constitutional freedom of religion ensures tolerance, but, in reality, refuses to practice what he preaches. One cannot ask for tolerance when he refuses to do the same for others.

In fine, the Court denies the plea that the holding of Catholic masses at the basement of the QC Hall of Justice be prohibited because the said practice does not violate the constitutional principle of separation of Church and State and the constitutional prohibition against appropriation of public money or property for the benefit of a sect, church, denomination, or any other system of religion.

WHEREFORE, the Court resolves to:

1. **NOTE** the letter-complaints of Mr. Tony Q. Valenciano, dated January 6, 2009, May 13, 2009, and March 23, 2010;

2. **NOTE** the 1st Indorsement, dated September 21, 2010, by the Office on Halls of Justice, containing photocopies and certified photocopies of previous actions made relative to the complaint;

3. **NOTE** the Letter-Comment, dated September 9, 2010, of Quezon City Regional Trial Court Executive Judge Fernando T. Sagun, Jr.;

4. **NOTE** the undated Letter-Comment of Quezon City Metropolitan Trial Court Executive Judge Caridad M. Walse-Lutero;

5. **DENY** the prayer of Tony Q. Valenciano to prohibit the holding of religious rituals in the QC Hall of Justice and in all halls of justice in the country; and

6. **DIRECT** the Executive Judges of Quezon City to **REGULATE** and **CLOSELY MONITOR** the holding of masses and other religious practices within the Quezon City Hall of Justice by ensuring, among others, that:

   (a) it does not disturb or interrupt court proceedings;

   (b) it does not adversely affect and interrupt the delivery of public service; and

   (c) it does not unduly inconvenience the public.

In no case shall a particular part of a public building be a permanent place for worship for the benefit of any and all religious groups. There shall also be no permanent display of religious icons in all halls of justice in the country. In case of religious rituals, religious icons and images may be displayed but their presentation is limited only during the celebration of such activities so as not to offend the sensibilities of members of other religious denominations or the non-religious public. After any religious affair, the icons and images shall be hidden or concealed from public view.

The disposition in this administrative matter shall apply to all halls of justice in the country. Other churches, religious denominations or sects are entitled to the same rights, privileges, and practices in every hall of justice. In other buildings not owned or controlled by the Judiciary, the Executive Judges should coordinate and seek approval of the building owners/ administrators accommodating their courts.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Peralta, Bersamin, del Castillo, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Leonardo-de Castro and *Jardeleza, JJ.,* see separate concurring opinions.

Caguioa, J., concurs with the separate opinion of *J.* Jardeleza.

Leonen, J., dissents, see dissenting opinion.

CONCURRING OPINION

LEONARDO-DE CASTRO, *J.*:

According to the Memorandum dated August 7, 2014 submitted by the Office of the Court Administrator (OCA), the case at bench originated from a series of Letters dated January 6, 2009, May 13, 2009, and March 23, 2010 that Mr. Tony Q. Valenciano (Valenciano) wrote to then Chief Justice Reynato S. Puno (Chief Justice Puno) wherein the former informed the latter about the regular and unabated practice of holding daily Roman Catholic Masses at the basement of the Quezon City Hall of Justice. In the aforementioned correspondences, Valenciano questioned the use of the said government facility for the aforesaid religious purpose and pointed out that the said practice violated the Constitutional principle of the separation of Church and State.[1] He likewise claimed that the same is violative of Article VI, Section 29(2) of the 1987 Constitution[2] which prohibits the appropriation of public funds to activities that benefit a religious organization.

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[1] 1987 Constitution, Article II, Section 6. "The separation of Church and State shall be inviolable."

[2] "No public money or property shall ever be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium."

In his January 6, 2009 Letter, Valenciano complained that the practice of allowing regular Roman Catholic Masses in the premises of the Quezon City Hall of Justice has generated a perception that there is "a stamp of approval of a bias favoring a religion" in violation of the Constitution. He further enumerated specific instances wherein the said practice had created unnecessary disturbance and inconvenience to the people who are employed and who utilize the said government facility, to wit:

1. Posted on the wall to the left side of the door of the Records Section of the OCC is a cork board where announcements are posted as in the name of the Priest due to say mass and at what time and day of the week.

2. Between 1:15pm to 1:30pm from Monday to Friday, the Basement Area also double-up as a "**conservatory of music**" as the Choral Group of the Chapel practices the hymnal of the Missal in preparation for the following day's mass which disturb those other employees trying to take a nap or else resting in their respective office.

3. In so far as can be gathered, the building's basement was designed as a **place of rest for the transacting public from 12:00am to 1:30pm**. This function has been abolished by the above-cited activities it being the venue of the rituals, becoming fully occupied during this hour.

4. Personnel and litigants of the Public Attorney's Office, RTC Branch Nos. 82 & 83, Legal Library, Philippine Mediation Center, Records Section of the OCC go into **mild consternation attending to their personal necessities** because they cannot traverse the Basement between 12am to 1:15pm to go to the lavatories. Additionally, the personnel of the Courts and the Public cannot use the elevators because it is blocked during this hour of the Mass and are forced to take several flights of stairs to reach the Basement from the upper floor.

5. The institutionalization of the goings-on has taken root and the imagery above-cited is in veritable fruition what with the practice of each office, court officer or prominent personality being designated as sponsor for the Mass to be offered and with said sponsoring is the matter of how to raise the stipend of the Priest officiating the said Mass. The designate usually does the reading of the Epistles of the Saints. Additionally, the name of the celebrants of Wedding or Birth

anniversary is announced to the congregation. And devotees who are lay ministers help the Priest distribute holy communion during the Mass. **Unmistakable signs all that the Church has appropriated the Basement Area as its regular venue, nay, as a private preserve**.

6. And as far as can be gathered, it is not uncommon to find among the Court personnel who have taken upon their shoulders the duty of ministering to the goings-on of the Chapel, have entered the practice of vying for the right to read the Epistle when the sponsor-designate is not in attendance or pass-up the opportunity, bringing in its train unsavory conduct toward each other. **A cause for back-biting and irritation among themselves.**

7. Usually, the water-pump generator because it produces discordant sound vis-a-vis the contrived silence during the Mass is shut-off, bringing in its train a "**no water in faucets state**" for the entire building with the attendant discomfort to the personnel who need to wash up after lunch for they bring their own lunch box to their respective workplace.

8. A question can be raised also as to whether or not the 2 dozens or so personnel of the Courts who have taken upon their shoulders the "Chapel Duties" have developed an attitude preferring to **engage more heartily in "Chapel Duties"** vis-a-vis their official duty for which they are being paid out of taxes collected from the people they ought to have priority for.

Then Chief Justice Puno referred Valenciano's January 6, 2009 Letter to then Deputy Court Administrator and Officer-in-Charge of the Office of Halls of Justice Antonio H. Dujua (DCA Dujua) for appropriate action who in turn requested then Quezon City Regional Trial Court (RTC) Executive Judge Teodoro A. Bay (Judge Bay) and Quezon City Metropolitan Trial Court (MeTC) Executive Judge Luis Zenon A. Maceren (Judge Maceren) to provide their respective comments on the issue. Judge Bay responded by recommending via a Memorandum dated March 10, 2009 that pending final resolution of the case, daily mass be permitted to continue at the basement of the Quezon City Hall of Justice, provided that: (1) the mass is limited to 30 minutes; (2) no loud singing is allowed so as not to disturb others who are not attending the mass; and (3) inconveniences caused by the mass are addressed. For his part,

Judge Maceren argued in his Letter dated March 6, 2009 that the holding of daily Roman Catholic mass does not violate the principle of separation of Church and State because the said principle does not prohibit the use of public property for religious purposes when the religious character of such use is merely incidental to a temporary use which is available indiscriminately to the public in general. He likewise claimed that the said activity is essential to achieving moral renewal which is in line with then Chief Justice Puno's advocacy on moral recovery. Valenciano subsequently wrote then Chief Justice Puno a Letter dated May 13, 2009 to inquire about the status of his complaint. The letter was again referred to DCA Dujua. No further action on the matter was made as per records.

Claiming that his concerns were not properly addressed, Valenciano sent his March 23, 2010 Letter to then Chief Justice Puno. In an *En Banc* Resolution dated June 22, 2010, the Court noted the aforementioned correspondence and referred the same to the OCA for evaluation, report and recommendation. Subsequently, the OCA through then Assistant Court Administrator Jenny Lind Aldecoa-Delorino (ACA Delorino) required then Quezon City RTC Executive Judge Fernando T. Sagun, Jr. (Judge Sagun) and Quezon City MeTC Executive Judge Carida M. Walse-Lutero (Judge Lutero) to comment on Valenciano's complaint.

In response, Judge Sagun informed the Court through his Letter-Comment dated September 9, 2010 that the concerns raised by Valenciano in his January 6, 2009 Letter have been addressed and measures have already been implemented to this end. He also maintained that the holding of daily masses should not be stopped because it is not detrimental and is in fact a source of an individual's power and strength. He also commented on the specific issues raised by Valenciano in this wise:

1. The cork board mentioned by Mr. Valenciano which used to be located at the Office of the Clerk of Court announcing the schedule of masses and the priest officiating the same is no longer being used;

2. While it is true that the choral group practices singing at the basement of the Quezon City Hall of Justice, it is not true that the group does

this on a daily basis. Rehearsals are usually conducted either a few minutes before or after the celebration of mass;

3. Masses have been considerably shortened to a little over thirty (30) minutes. It is only during special holidays of obligation when the celebration of mass goes beyond past 1:00 o'clock in the afternoon;

4. It is not true that personnel and litigants go into mild consternation because they allegedly cannot traverse the basement going to the lavatories on the first floor between 12:00 noon and 1:15pm during mass. Indeed, the side pathways leading to the lavatories upstairs are open and can be used without obstruction;

5. As regards the use of elevators, note must be taken of the fact that elevator attendants operating the elevator also take their lunch break from 12:00 noon to 1:00pm;

6. On the issue of sponsoring masses, priests who officiate the masses never demand a fee for the services, and are rarely assisted by a lay minister as the priest distribute holy communion all by himself;

7. There is no such instance where court personnel vying to read the epistle during mass, cause back-biting and irritation amongst themselves;

8. Regarding the shutting off of the water pump to prevent the noise it caused from disrupting mass, but which allegedly also cut off water supply to the entire Hall of Justice, the said pump has been broken beyond repair and decommissioned since December of 2009;

9. Finally, with respect to court personnel who assist in the preparation of the mass, they do the preparations before the day official starts and do not hamper the performance of their official duties in court.[3]

On the other hand, Judge Lutero in her Memorandum to then ACA Delorino defended the Roman Catholic activity in question despite her being a Protestant Christian because she does not believe that, contrary to Valenciano's claims, it violates the principle of separation of Church and State. However, she suggested that in order to avoid offending the sensibilities of non-Roman Catholics, religious statues should not be displayed with the exception of the crucifix. She likewise made the

[3] OCA Memorandum dated August 7, 2014, pp. 4-5.

following specific comments on the issue as enumerated in the August 7, 2014 OCA Memorandum:

1. Although mass is held at the basement of the Quezon City Hall of Justice during lunch breaks, it is not true that the Executive Judges of the Quezon City courts have approved the conversion of the said portion of the basement into a chapel, as in fact, the said area continues to be used as a waiting area for the public;

2. The allegation of Mr. Valenciano that holding of masses at the Quezon City Hall of Justice violates the Constitution is baseless. It is not the conduct of masses in public places which the Constitution prohibits, but the passage of laws or the use of public funds for the purpose of establishing a religion or prohibiting the free exercise thereof which is prohibited. In this instance, no law or rule has been passed nor have public funds been used to support the celebration of masses within the Quezon City Hall of Justice;

3. Considering that Catholic masses are held only during lunch breaks and do not disturb court proceedings, there is no reason to discontinue the practice. To stop the celebration of mass at the Quezon City Hall of Justice would be tantamount to repressing the right of those who attend these masses from freely exercising their religion. If Muslim court personnel are allowed to worship their Allah even during office hours inside their offices; Seventh Day Adventists are exempt from rendering Saturday court duties because their religion prohibits them from working on Saturdays; and Christians are allowed to conduct Bible studies inside their offices, Roman Catholics should also be allowed to freely exercise their religion and worship in the form of celebrating mass;

4. It is not true as alleged by Mr. Valenciano that the holding of Catholic masses attended by Judges, Branch Clerks of Court and other judicial employees grant Catholics better chances of obtaining favorable resolutions from the Court. The fear is imagined. Indeed, most cases filed in court are filed between and among Catholics. In such instance, how then can a magistrate favor one Catholic over the other;

5. The holding of masses has no connection to judges being biased. In any case, only a handful of judges attend the subject mass celebrated at the basement of the Quezon City Hall of Justice. Neither does the posting of announcements relating to mass schedules and name of

officiating priests on the cork board of the Office of the Clerk of Court has anything to do with perceived judicial biases;

6. Contrary to Mr. Valenciano's allegation, the basement of the Quezon City Hall of Justice was not designed as a resting place for the public, but was originally occupied by the Register of Deeds. However, the said Office has since been moved to another location. Other court offices and branches were therefore, subsequently transferred to the basement after the Register of Deeds moved out;

7. The public is generally prohibited from loitering inside the Quezon City Hall of Justice unless they have official business transactions with the concerned offices thereat. On the other hand, no official business is transacted during lunch breaks. This being the case, the public is not actually deprived of a waiting space during lunch breaks as they cannot be said to have official business with the offices located at the Hall of Justice during the said time;

8. There is a clear path from the public offices leading to the comfort rooms. Court personnel and the public are thus never physically prevented from reaching the lavatories during mass. Neither are the elevators unreachable for use since the area fronting the same are clear of any obstructions. If at all the elevators cannot be used during the mass, it is because elevator attendants also take their lunch breaks from 12:00 noon to 1:00pm. In any case, to climb a single flight of stairs from the basement to the first floor should not really pose too much trouble, and should in fact be encouraged to save energy;

9. The alleged water interruption caused by the shutting off of the water pump during mass clearly has no basis. Executive Judge Lutero claims that being on the third floor of the Quezon City Hall of Justice, she has yet to experience the unavailability of water during mass. If ever water interruptions occurred before, the same was caused by pump maintenance problems and not because the water pump was specifically shut off during mass;

10. There is really no problem in allowing court employees to volunteer their services during the mass as long as this does not interfere with the performance of their official duties. To date, the Office of the Executive Judge has yet to receive a single complaint coming from either judges of the Metropolitan Trial Court or other court users regarding such a situation[.][4]

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[4] *Id*. at 5-6.

As pointed out by the OCA in its August 7, 2014 Memorandum, Valenciano seeks to abate and discontinue the practice of holding Roman Catholic Mass not only in the premises of the Quezon City Hall of Justice but also in all Halls of Justice in the country. He cites the violation of the Constitutional principle of the separation of Church and State and the general inconvenience created by such practice on the public as bases for requesting its total prohibition.

In the said memorandum, the OCA analyzes and frames Valenciano's Constitutional argument in the following manner:

> On constitutional grounds, complainant Valenciano raises the issue of the Separation of the Church and the State.
>
> Article II, Section 6 of the 1987 Constitution emphatically declares that the "separation of Church and State shall be inviolable." The Bill of Rights, specifically Article III, Section 5 of the Constitution, on the other hand, provides that: "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights." The aforementioned provisions are known as the principal religion clauses of the Constitution, which essentially guarantee two things: *first*, the State cannot establish or favor a particular religion as embodied in the "Establishment Clause"; and *second*, the State cannot prohibit anyone from freely choosing his religion as embodied in the "Free Exercise Clause."
>
> The Establishment Clause principally prohibits the State from sponsoring any religion, or favoring any religion as against other religions. It mandates a strict neutrality in affairs among religious groups. In the landmark United States case of *Everson v. Board of Education*, the United States Supreme Court, speaking through Justice Hugo Black, held that the Establishment Clause means at least this:
>
> > Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or

> professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation' between Church and State.

In our own landmark case of *Estrada v. Escritor*, the High Court has however scholarly explained that the Establishment Clause has been interpreted using either of two standards. First is the standard of ***separation***, which may take the form of either (a) **strict separation**, or (b) the tamer version of **strict neutrality or separation**.

The **Strict Separation** believes that the Establishment Clause was meant to protect the state from the church, and the state's hostility towards religion allows no interaction between the two. According to this Jeffersonian view, an absolute barrier to formal interdependence of religion and state needs to be erected. Religious institutions could not receive aid, whether direct or indirect, from the state. Nor could the state adjust its secular programs to alleviate burdens the programs placed on believers. Only the complete separation of religion from politics would eliminate the formal influence of religious institutions and provide for a free choice among political views, thus a strict "wall of separation" is necessary. In short, there is total detachment between the church and the state, and neither should have anything to do with the other.

On the other hand, the tamer version of the strict separationist view, the **Strict Neutrality** view, believes that the "wall of separation" does not require the state to be their adversary. Rather, the state must be neutral in its relations with groups of religious believers and non-believers." State power is no more to be used so as to handicap religious than it is to favor them. The Strict Neutrality approach is not hostile to religion, but it is strict in holding that religion may not be used as a basis for classification for purposes of governmental action, whether the action confers right or privileges or imposes duties or obligations. Only secular criteria may be the basis of government action. It does not permit, much less require, accommodation of secular programs to religious belief.

Viewed in light of the foregoing discussion, it is clear that complainant Mr. Valenciano anchors his present protest on the standard of **Separation** in interpreting the Establishment Clause. Accordingly, by applying the standard of **Separation**, the courts in this case should either be totally disconnected with any religion (when approached from the **Strict Separation** perspective) or that it should, at the very least remain neutral among all religions (when approached from the **Strict Neutrality** perspective). Mr. Valenciano however contends that in allowing the celebration of masses in the basement of the Quezon City courthouses in this case, the State, as represented by the Judicial Branch of government, shows bias towards the Roman Catholic religion.

Indeed, Mr. Valenciano imputes that the Executive Judges of Quezon City have neither exercised strict *separation* from the church nor strict *neutrality* when: (1) they allegedly gave tacit or formal approval in converting a portion of the basement of the Quezon City HOJ into a "Roman Catholic Church"; (2) resultantly, the attendance of judges, clerks of court, and other judicial employees to the said mass allegedly created an "imagery in the minds of non-Roman Catholics among the citizenry that Catholics always stand a better chance of being granted leniency before the Courts..."; and (3) the said Chapel was permitted to celebrate its 20th anniversary sometime in October of 2008, with the "pomp as befits a Chapel of the Roman Catholic Church."[5]

The OCA then opined that Valenciano's arguments are without merit. It arrived at this conclusion by using the standard of **Benevolent Neutrality/Accommodation** as the controlling approach that should be applied in this case which involves the interpretation of the Establishment Clause vis-a-vis the Free Exercise Clause. Quoting *Estrada v. Escritor*,[6] the OCA declared that "[a]commodations are government policies that take religion specifically into account not to promote the government's favored form of religion, but to allow individuals and groups to exercise their religion without hindrance. Their purpose or effect therefore is to remove a burden on, or facilitate the exercise of, a person's or institution's religion."[7]

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[5] *Id*. at 7-9.

[6] 525 Phil. 110 (2006).

[7] OCA Memorandum dated August 7, 2014, p. 9.

Thus, the OCA concluded that:

In sum, the religious nature of the use of the herein public area is merely incidental. The primary secular purpose for accommodating the religious exercise within the court premises is apparently to sustain an individual's free exercise of his religion as equally guaranteed by the Constitution and to reinforce an individual's sense of morality. In case of the latter, there is no dispute that morality is a value most crucial and indispensable for government employees most especially for those working in the judicial branch of government. x x x.

x x x x x x x x x

It is thus clear that while the celebration of mass is religious in nature, and while the Court allows its exercise within its public edifices, the overriding consideration for such an *accommodation* is not religious in nature, but secular – that is that the Court recognizes and appreciates that such an exercise help elevate an employee's sense of morality which eventually translates in the performance of his work.[8]

The OCA then put forward the following recommendations for the consideration of the Court:

1. the 1st Indorsement dated 21 September 2010 by the Halls of Justice, containing photocopies and certified photocopies of previous actions made on the instant case, be **NOTED**;

2. the Letter-Comment dated 9 September 2010 of Quezon City Regional Trial Court Executive Judge Fernando T. Sagun, Jr., be **NOTED**;

3. the undated Letter-Comment of Quezon City Metropolitan Trial Court Executive Judge Caridad M. Walse-Lutero, be **NOTED**;

4. the letter-complaints of Mr. Valenciano dated **9 January 2009**, **13 May 2009** and **23 March 2010** be **DISMISSED** for lack of merit and basis;

5. the Executive Judges of Quezon City be **DIRECTED** to **CLOSELY REGULATE** and **MONITOR** the holding of masses and other religious practices within the Quezon City Hall of Justice by ensuring that: (a) the public is not unduly inconvenienced by the exercise

[8] *Id.* at 13.

thereof; (b) it does not adversely affect and interrupt the delivery of public service, and (c) display of religious icons are limited only during the celebration of such activities so as not to offend the sensibilities of members of other religious denominations or the non-religious public; and

6. the instant administrative case be considered **CLOSED** and **TERMINATED**.[9]

Justice Jose C. Mendoza, who reviewed the August 7, 2014 Memorandum of the OCA, agreed with the findings and recommendations of the OCA and denied the prayer of Valenciano that the holding of religious rituals of any of the world's religions in the Quezon City Hall of Justice or any hall of justice all over the country be prohibited.

I fully concur with the *ponencia* of Justice Mendoza which comprehensively and with clarity enunciated the grounds to deny the prayer of Valenciano. I deemed it necessary, however, with due respect to Justice Marvic MVF Leonen, to respond to his Dissenting Opinion.

According to Justice Leonen, the views of Judges Sagun and Lutero are inconsistent with the stand of the Office of the Chief Attorney as reflected in its September 12, 2003 Memorandum for then Chief Justice Hilario G. Davide, Jr., wherein it recommended to deny on constitutional grounds, the request of Rev. Fr. Carlo M. Ilagan to hold a one-day vigil in honor of the Our Lady of Caysasay within the premises of the Supreme Court building.[10]

However, the jurisprudence cited in the Memorandum dated September 12, 2003 of the Office of the Chief Attorney (OCAT) addressed to then Chief Justice Davide had already been overturned. *Gerona v. Secretary of Education*[11] was superseded by *Ebralinag v. The Division Superintendent of Schools of Cebu*,[12]

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[9] *Id*. at 15-16.

[10] *J.* Leonen, *Dissenting Opinion*, p. 3.

[11] 106 Phil. 2 (1959).

[12] G.R. Nos. 95770 & 95887, March 1, 1993, 219 SCRA 256, 271-272.

wherein the Court upheld the religious freedom of members of Jehovah's Witnesses not to salute the flag because, according to their religion, to do otherwise is prohibited by the Holy Bible. The Court, thus said:

> We are not persuaded that by exempting the Jehovah's Witnesses from saluting the flag, singing the national anthem and reciting the patriotic pledge, this religious group which admittedly comprises a "small portion of the school population" will shake up our part of the globe and suddenly produce a nation "untaught and uninculcated in and unimbued with reverence for the flag, patriotism, love of country and admiration for national heroes" (*Gerona vs. Sec. of Education*, 106 Phil. 2, 24). After all, what the petitioners seek only is exemption from the flag ceremony, not exclusion from the public schools where they may study the Constitution, the democratic way of life and form of government, and learn not only the arts, sciences, Philippine history and culture but also receive training for a vocation or profession and be taught the virtues of patriotism, respect for human rights, appreciation for national heroes, the rights and duties of citizenship, and moral and spiritual values (Sec. 3[2], Art. XIV, 1987 Constitution) as part of the curricula. Expelling or banning the petitioners from Philippine schools will bring about the very situation that this Court had feared in *Gerona*. Forcing a small religious group, through the iron hand of the law, to participate in a ceremony that violates their religious beliefs, will hardly be conducive to love of country or respect for duly constituted authorities.

The ruling in *County of Allegheny v. American Civil Liberties Union*[13] also cited by the aforesaid Memorandum of the Office of the Court Attorney did not enunciate an absolute rule. In *Lynch v. Donnelly*,[14] cited in *Estrada v. Escritor*,[15] the Court upheld a city-sponsored Nativity scene or crèche in Pawtucket City, Rhode Island because the "city has a secular purpose for including the crèche, the city has not impermissibly advanced religion, and including the crèche does not create excessive

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[13] 492 U.S. 573 (1989).

[14] 465 U.S. 668 (1984).

[15] 455 Phil. 411 (2003).

entanglement between religion and government."[16] Thus, the September 12, 2003 OCAT Memorandum is not a reliable support for the Dissenting Opinion.

Justice Leonen is also of the opinion that the case of *Estrada v. Escritor*[17] involving an administrative complaint for immorality against a court interpreter who cohabited and had a son with a married man is not applicable to the case at bar since "jurisprudence which provides for exceptions to State regulation is different from doctrinal support for endorsing a specific religion without a separate overarching compelling lawful and separate state interest." He further argues that the aforementioned jurisprudence was not unanimously voted upon by the Court *En Banc* therefore the status of benevolent neutrality approach as doctrine is suspect.[18]

I respectfully submit that it is a mistake to trivialize the import of the ruling in *Estrada v. Escritor*[19] in the case at bar which involves a lawful exercise of religious freedom. While this case does not concern an immoral act nor a criminal offense, *Estrada v. Escritor*[20] is a jurisprudential gem that painstakingly, comprehensively, and exhaustively considered numerous cases of different factual background before passing upon the issue in said case. It traced the Old World antecedents of the American religion clauses, particularly the history and background of the concepts, jurisprudence and standards of the two religion clauses in the United States – the Free Exercise Clause and the Establishment Clause – and the history of religious freedom in the Philippines from the Treaty of Paris of December 10, 1898, the Malolos Constitution of 1899, the laws and regulations enforced in the Philippines during the American regime, and the provisions of the 1935, 1973 and 1987 Constitution dealing

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[16] *Lynch v. Donnelly*, *supra* note 14.

[17] *Supra* note 15.

[18] *Supra* note 10 at 11-13.

[19] *Supra* note 15.

[20] *Id*.

with the religious clauses and the jurisprudence that applied the said provisions to diverse factual settings which called upon the Court to determine "what the clauses specifically require, permit and forbid." The standards and the tests in the balancing of the interaction between the two religious clauses that jurisprudence has laid down throughout the long history of these clauses are valuable guides in the resolution of this case.

The dissenting opinions in the *Estrada v. Escritor*[21] case focused on whether or not the act of respondent court employee which is penalized by our law as concubinage and which may be considered as immoral or prejudicial to the best interest of public service can be excused or condoned due to the Declaration of Pledging Faithfulness between respondent Escritor and her married partner which is recognized by their religious sect known as Jehovah's Witnesses as sufficient justification for their cohabitation. The facts of the case which triggered the strong dissenting opinions in the aforesaid case are far removed from the religious exercise now before the Court, as no criminal act is committed by the faithful in hearing the mass during lunch break.

Moreover, it is also my view that religious freedom can be invoked not only against a facially-neutral law that unduly impairs such freedom but any regulation or practice that has the same effect unless it passes the accepted test or standard laid down by jurisprudence to protect the freedom of religion that occupies a preferred status in the hierarchy of human rights. Moreover, religion has an admitted moralizing influence that can contribute in the nurturing of high moral values among public servants which will have a beneficial effect in the discharge of their duties.

At the outset, it must be stressed that the holding of the masses at the premises of the Quezon City Hall of Justice is not sponsored or supported by the said Court. It was at the own initiative of the Catholic faithful. Neither were the masses endorsed by the Court or any of its officials with the intention of propagating

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[21] *Id*.

the Catholic religion to the detriment of other religions. The assumption that inequality of treatment is promoted has no factual basis. No person has complained that his/her religious practice has been discriminated upon. Hence, the holding of masses during lunch break would not amount to an excessive entanglement between the courts and religion.

To require the faithful to go to nearby churches to attend masses or to pray will make the exercise of religious freedom too burdensome, notwithstanding that no prejudice to public service nor discrimination of other religions is shown. The obligations demanded of a public servant to comply with the highest standards of integrity, morality and commitment in the efficient delivery of public service almost always coincide with the obligations dictated by his religion, which has been defined in *American Bible Society v. City of Manila*,[22] also cited in *Estrada v. Escritor*,[23] as follows:

> [Religion] has reference to one's views of his relations to His Creator and to the obligations they impose of reverence to His being and character, and obedience to His Will. x x x.

Hence, in the *Aglipay v. Ruiz*[24] case, Justice Laurel recognized the "elevating influence of religion in human society." Fr. Joaquin G. Bernas, SJ, a member of the 1986 Constitutional Commission, stated in his position paper that the Philippine Constitution is not hostile to religion and, in fact, recognizes the value of religion and accommodates religion.[25] In *Estrada v. Escritor*,[26] the Court further elucidated that:

> Finally, to make certain the Constitution's benevolence to religion, the Filipino people "implored(ing) the aid of Divine Providence(,) in order to establish a government that shall embody their ideals,

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[22] 101 Phil. 386, 398 (1957).

[23] *Supra* note 15.

[24] 64 Phil. 201, 206 (1937).

[25] *Estrada v. Escritor*, *supra* note 15 at 571.

[26] *Id*. at 569-573.

conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence under a regime of justice, liberty, and democracy, (in) ordain(ing) and promulgat(ing) this Constitution." A preamble is a "key to open the mind of the authors of the constitution as to the evil sought to be prevented and the objects sought to be accomplished by the provisions thereof." There was no debate on the inclusion of a "Divine Providence" in the preamble. In *Aglipay*, Justice Laurel noted that when the Filipino people implored the aid of Divine Providence, "(t)hey thereby manifested their intense religious nature and placed unfaltering reliance upon Him who guides the destinies of men and nations. The 1935 Constitution's religion clauses, understood alongside the other provisions on religion in the Constitution, indubitably shows not hostility, but benevolence, to religion.

x x x x x x x x x

The provisions of the 1935, 1973 and 1987 constitutions on tax exemption of church property, salary of religious officers in government institutions, optional religious instruction and the preamble all reveal without doubt that the Filipino people, in adopting these constitutions, did not intend to erect a high and impregnable wall of separation between the church and state. The strict neutrality approach which examines only whether government action is for a secular purpose and does not consider inadvertent burden on religious exercise protects such a rigid barrier. By adopting the above constitutional provisions on religion, the Filipinos manifested their adherence to the *benevolent neutrality* approach in interpreting the religion clauses, an approach that looks further than the secular purposes of government action and examines the effect of these actions on religious exercise. x x x.

The *benevolent neutrality* approach is further explored in *Estrada v. Escritor*[27] as follows:

Benevolent neutrality is manifest not only in the Constitution but has also been recognized in Philippine jurisprudence, albeit not expressly called "benevolent neutrality" or "accommodation." In *Aglipay*, the Court not only stressed the "elevating influence of religion

[27] *Id.* at 575-576.

in human society" but acknowledged the Constitutional provisions on exemption from tax of church property, salary of religious officers in government institutions, and optional religious instruction as well as the provisions of the Administrative Code making Thursday and Friday of the Holy Week, Christmas Day and Sundays legal holidays. In *Garces*, the Court not only recognized the Constitutional provisions indiscriminately granting concessions to religious sects and denominations, but also acknowledged that government participation in long-standing traditions which have acquired a social character – "the *barrio fiesta* is a socio-religious affair" – does not offend the Establishment Clause. In *Victoriano*, the Court upheld the exemption from closed shop provisions of members of religious sects who prohibited their members from joining unions upon the justification that the exemption was not a violation of the Establishment Clause but was only meant to relieve the burden on free exercise of religion. In *Ebralinag*, members of the Jehovah's Witnesses were exempt from saluting the flag as required by law, on the basis not of a stature granting exemption but of the Free Exercise Clause without offending the Establishment Clause.

While the U.S. and Philippine religion clauses are similar in form and origin, Philippine constitutional law has departed from the U.S. jurisprudence of employing a separationist or strict neutrality approach. The Philippine religion clauses have taken a life of their own, breathing the air of *benevolent neutrality* and *accommodation*. Thus, the wall of separation in Philippine jurisdiction" is not as high and impregnable as the wall created by the U.S. Supreme Court in *Everson*. While the religion clauses are a unique American experiment which understandably came about as a result of America's English background and colonization, the life that these clauses have taken in this jurisdiction is the Philippines' own experiment, reflective of the Filipinos' own national soul, history and tradition. After all, "the life of the law.... has been experience." (Citations omitted.)

The Dissenting Opinion **reverses** the test enunciated in the *Estrada v. Escritor*[28] case when it posits that there must be an "urgent and compelling need" for allowing religious rituals or the exercise of one's religious freedom. The said case ruled not that "urgent and compelling need" must be shown before religious freedom can be exercised, but instead, it is the State

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[28] *Id.*

that bears a heavy burden to show a compelling State interest to hinder the exercise of religious freedom. I quote the case of *Estrada v. Escritor*[29]:

> A test that would protect the interests of the state in preventing a substantive evil, whether immediate or delayed, is therefore necessary. However, not any interest of the state would suffice to prevail over the right to religious freedom as this is a fundamental right that enjoys a preferred position in the hierarchy of rights – "the most inalienable and sacred of all human rights," in the words of Jefferson. This right is sacred for an invocation of the Free Exercise Clause is an appeal to a higher sovereignty. The entire constitutional order of limited government is premised upon an acknowledgment of such higher sovereignty, thus the Filipinos implore the "aid of Almighty God in order to build a just and humane society and establish a government." As held in *Sherbert*, only the gravest abuses, endangering *paramount interests* can limit this fundamental right. A mere balancing of interests which balances a right with just a colorable state interest is therefore not appropriate. Instead, only a compelling interest of the state can prevail over the fundamental right to religious liberty. The test requires the state to carry a heavy burden, a compelling one, for to do otherwise would allow the state to batter religion, especially the less powerful ones until they are destroyed. In determining which shall prevail between the state's interest and religious liberty, reasonableness shall be the guide. The "compelling state interest" serves the purpose of revering religious liberty while at the same time affording protection to the paramount interests of the state. x x x. (Citations omitted.)

In this administrative matter, RTC Executive Judge Sagun and MeTC Executive Judge Lutero both submitted their respective comments as directed by the OCA findings that the Roman Catholic masses held during lunch breaks did not disturb court proceedings and the service of employees during the mass did not interfere with the performance of their official duties. Moreover, devotees of other religions were not discriminated upon.

No compelling State interest to prohibit the exercise of religious freedom having been established in this instance, I reiterate my concurrence with the *ponencia* of Justice Mendoza.

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[29] *Id*. at 578.

CONCURRING OPINION

JARDELEZA, *J.*:

"Offense, however, does not equate to coercion. Adults often encounter speech they find disagreeable; and an Establishment Clause violation is not made out any time a person experiences a sense of affront from the expression of contrary religious views x x x."[1]

I agree with the excellently argued *ponencia* and its conclusion that the Catholic masses held at the Quezon City Hall of Justice should not be prohibited. I take this opportunity to add a few words on the important constitutional issues raised in this case.

Mr. Tony Q. Valenciano (Mr. Valenciano) wrote this Court in 2009, and again in 2010, concerning the holding of Roman Catholic masses at the basement of the Quezon City Hall of Justice. He claims that this is a violation of the constitutional command of separation of church and state and the constitutional prohibition against the appropriation of public money for the benefit of a sect, church, denomination, or any other system of religion. This Court asked Executive Judge Fernando T. Sagun, Jr. (Executive Judge Sagun) of the Regional Trial Court, and Executive Judge Caridad W. Lutero (Executive Judge Lutero) of the Metropolitan Trial Court of Quezon City to comment on the letters. Both judges take the position that the questioned practice violates no constitutional provision. Executive Judge Sagun explains that steps have been taken to address Mr. Valenciano's concerns, such as the shortening of the mass to thirty (30) minutes. Executive Judge Lutero adds that all denominations are allowed to engage in religious practices within the confines of the Quezon City Hall of Justice. Christians are allowed to conduct their own bible studies and Muslims to worship Allah in their offices.

The Office of the Court Administrator recommends that daily masses at the Quezon City Hall of Justice be allowed subject

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[1] *Town of Greece v. Galloway*, 12-696, May 5, 2014.

to the following conditions: (a) the public is not unduly inconvenienced by the exercise thereof; (b) it does not adversely affect and interrupt the delivery of public service; and (c) the display of religious icons are limited only during the celebration of such activities so as not to offend the sensibilities of members of other religious denominations or the non-religious public.

The Establishment Clause is a central doctrine in our constitutional democracy. Through the years, this Court has been called upon to uphold this constitutional provision and strike down government acts that threaten to break the wall of separation that prevent religion and government from excessively entangling. In all Establishment Clause cases, the "measure of constitutional adjudication is the ability and willingness to distinguish between real threat and mere shadow."[2] I believe that this case poses no danger to the separation of church and state.

Section 5 of the Bill of Rights of the Constitution states—

> Sec. 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

This provision encapsulates the Religion Clauses of our Constitution—the Establishment Clause and the Free Exercise Clause. These two clauses complement each other, and together, they promote the flourishing of the freedom to choose to believe or not to believe in the concept of a supreme being.

The Free Exercise Clause mandates an absolute protection of the freedom to believe. Thus, a person is free to worship any god he or she may choose or none at all.[3] The difficulty

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[2] *School Dist. of Abington Tp. v. Schempp,* 374 U.S. 203, 308 (1963), Justice Goldberg, concurring.

[3] *Re: Request of Muslim Employees in the Different Courts in Iligan City (Re: Office Hours)*, A.M. No. 02-2-10-SC, December 14, 2005, 477 SCRA 648, 655-656, citing Justice Isagani A. Cruz, *Constitutional Law* (1995).

and the beauty of the Free Exercise Clause, however, are found in its application in the realm of actions. While a person is free to believe what he or she may choose, he or she is not absolutely free to act on his or her beliefs. In constitutional adjudication, the challenge has often been the determination of whether a governmental act jeopardizes the freedom to act on one's belief, and whether the freedom to exercise a religion justifies an exemption from a law or government regulation. We have had the opportunity to rule on cases involving the Free Exercise Clause, and we have consistently endeavored to find the delicate balance between the secular interest of the state and the freedom of religion of the individual.

On the other hand, the Establishment Clause, in its strict sense, bars a state from creating a state religion or espousing an official religion. There are, however, several gradations in the application of the Establishment Clause. It extends its prohibition not only to official acts establishing a state religion but also to government acts that have the effect of endorsing religion or favoring one over others. In *Iglesia Ni Cristo v. Court of Appeals*,[4] we held that the Establishment Clause prohibits the state from leaning in favor of religion. "Neutrality alone is its fixed and immovable stance."[5]

This notwithstanding, the Establishment Clause must not be construed so literally so as to impose an absolute separation between the affairs of the state and the church. It exists not in the pursuit of separation for its own sake. Rather, the goal of the Establishment Clause is to create constitutional space where religion may flourish. The Establishment Clause bars the state from favoring any religion so that it may not inhibit religious belief by rewarding other religious beliefs.[6] The Establishment Clause has never been intended, and as such, should not be interpreted to serve as a tool to alienate the church from the state.

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[4] G.R. No. 119673, July 26, 1996, 259 SCRA 529.

[5] *Id.* at 547.

[6] *Estrada v. Escritor*, A.M. No. P-02-1651, June 22, 2006, 492 SCRA 1, 33.

The Religion Clauses are unique in that while their application oftentimes creates tension, they also exist to protect the essential need to promote liberty of conscience—the choice to believe or not to believe in a greater being. The Free Exercise Clause insures this by insulating the individual from any government act that may prevent or burden his or her right to practice his or her faith within the limits of the law. The Establishment Clause upholds freedom of religion by enforcing neutrality and making volunteerism the determining factor in an individual's religious choices.[7] The state is neutral to all religions. It does not espouse any of them so that an individual will be free, without any kind of compulsion, to make the choice for himself or herself.

Our jurisprudence on the Religion Clauses reveal that in cases where this Court is called upon to perform the delicate balancing of protecting freedom of religion and upholding the legitimate interest of the state, we have always chosen not to espouse a blind adherence to an absolute separation of church and state but one that permits accommodation, whenever possible, in the greater pursuit of allowing freedom of religion to flourish.

In *Aglipay v. Ruiz*,[8] we found that the Director of Posts may validly issue and sell postage stamps commemorative of the Thirty-Third International Eucharistic Congress without violating the Establishment Clause. We found that the purpose for issuing and selling the stamps was to promote the Philippines and attract tourists as it was the seat of the Eucharistic Congress. While the issuance and sale of the stamps may be "inseparably linked with an event of a religious character, the resulting propaganda, if any, received by the Roman Catholic Church, was not the aim and purpose of the Government."[9] It is the main purpose and not the mere incidental results that should matter. We categorically declared that what is guaranteed in the Constitution is religious liberty and not mere religious toleration. In explaining

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[7] *Estrada v. Escritor*, A.M. No. P-02-1651, August 4, 2003, 408 SCRA 1.

[8] 64 Phil. 201 (1937).

[9] *Id.* at 209.

the many ways that the affairs of the state and the church often intersect, we held—

> Religious freedom, however, as a constitutional mandate is not inhibition of profound reverence for religion and is not a denial of its influence in human affairs. Religion as a profession of faith to an active power that binds and elevates man to his Creator is recognized. And, in so far as it instills into the minds the purest principles of morality, its influence is deeply felt and highly appreciated. When the Filipino people, in the preamble of their Constitution, implored "the aid of *Divine Providence*, in order to establish a government that shall embody their ideals, conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence under a regime of justice, liberty and democracy," they thereby manifested their intense religious nature and placed unfaltering reliance upon Him who guides the destinies of men and nations. The elevating influence of religion in human society is recognized here as elsewhere. In fact, certain general concessions are indiscriminately accorded to religious sects and denominations. Our Constitution and laws exempt from taxation properties devoted exclusively to religious purposes (sec. 14, subsec. 3, Art. VI, Constitution of the Philippines and sec. 1, subsec. 4, Ordinance appended thereto; Assessment Law, sec. 344, par. [*c*], Adm. Code). Sectarian aid is not prohibited when a priest, preacher, minister or other religious teacher or dignitary as such is assigned to the armed forces or to any penal institution, orphanage or leprosarium (sec. 13, subsec. 3, Art. VI, Constitution of the Philippines). Optional religious instruction in the public schools is by constitutional mandate allowed (sec. 5, Art. XIII, Constitution of the Philippines, in relation to sec. 928, Adm. Code). Thursday and Friday of Holy Week, Thanksgiving Day, Christmas Day, and Sundays and made legal holidays (sec. 29, Adm. Code) because of the secular idea that their observance is conclusive to beneficial moral results. The law allows divorce but punishes polygamy and bigamy; and certain crimes against religious worship are considered crimes against the fundamental laws of the state (*see* arts. 132 and 133, Revised Penal Code).[10]

In *American Bible Society v. City of Manila*,[11] we held that ordinances requiring businesses to obtain permits and pay license

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[10] *Id.* at 206-207.

[11] G.R. No. L-9637, 101 Phil. 386 (1957).

fees cannot be applied to the American Bible Society's practice of distributing and selling bibles and/or gospel excerpt. We explained that the constitutional guaranty of the free exercise and enjoyment of religious profession and worship carries with it the right to disseminate religious information. Any restraint of this right can only be justified on the ground that there is a clear and present danger of any substantive evil which the state has the right to prevent.[12]

We also upheld, in *Victoriano v. Elizalde Rope Workers' Union*,[13] a law exempting certain employees from close shop agreements in collective bargaining when their religion prohibits it. In explaining the Religion Clauses of the Constitution, we declared—

> **The constitutional provision [not] only prohibits legislation for the support of any religious tenets or the modes of worship of any sect, thus forestalling compulsion by law of the acceptance of any creed or the practice of any form of worship, but also assures the free exercise of one's chosen form of religion within limits of utmost amplitude**. It has been said that the religion clauses of the Constitution are all designed to protect the broadest possible liberty of conscience, to allow each man to believe as his conscience directs, to profess his beliefs, and to live as he believes he ought to live, consistent with the liberty of others and with the common good.[14]

In *Ebralinag v. The Division Superintendent of Schools of Cebu*,[15] we reversed the thirty-year old doctrine in *Gerona v. Secretary of Education*[16] that members of the Jehovah's Witness may be validly dismissed from school because of their refusal to salute the Philippine flag. We held that while saluting the flag is required under the law, members of the Jehovah's Witness ought to be exempted out of respect for their religious beliefs.

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[12] *Id.* at 398-399.

[13] G.R. No. L-25246, September 12, 1974, 59 SCRA 54.

[14] *Id.* at 73; citations omitted; emphasis ours.

[15] G.R. No. 95770, March 1, 1993, 219 SCRA 256.

[16] 106 Phil. 2 (1959).

We said that dismissing students from school because of their refusal to salute the flag in accordance with their religion is "alien to the conscience of the present generation of Filipinos who cut their teeth on the Bill of Rights which guarantees their rights to free speech and the free exercise of religious profession and worship."[17]

We also found constitutionally infirm the decision of the Movie and Television Review and Classification Board (MTRCB) in giving an X-rating to the show "*Ang Iglesia Ni Cristo*."[18] The MTRCB used as one of its grounds the fact that the show, which discussed the doctrines of the *Iglesia Ni Cristo*, "offend[s] and constitute[s] an attack against other religions."[19] We ruled that the MTRCB has no authority to stifle the show's criticisms of other religions as it is not the task of the state "to favor any religion by protecting it against an attack by another religion."[20] We emphasized that neutrality alone is the "fixed and immovable stance."[21]

We have even incorporated in our administrative policy an accommodation of the religious practices of our court employees. In *Re: Request of Muslim Employees in the Different Courts in Iligan City (Re: Office Hours)*,[22] we allowed Muslim court employees to hold flexible office hours from 7:30 a.m. to 3:30 p.m. without any break during the month of Ramadan. While we refused to allow them to hold office from 7:30 am to 3:30 pm every Friday for the entire calendar year, this was based on what we deem is a value that justifies slightly inconveniencing the religious practice of Muslims. Specifically, we upheld the civil service rule which enjoins all civil servants, of whatever

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[17] *Ebralinag v. The Division Superintendent of Schools of Cebu City*, *supra* at 270.

[18] *Iglesia Ni Cristo v. Court of Appeals*, *supra* note 4.

[19] *Id.* at 535.

[20] *Id.* at 547.

[21] *Id.*

[22] *Supra* note 3.

religious denomination, to render public service of no less than eight hours a day or 40 hours a week. In other words, our declared policy is to allow the practice and expression of religious faith for as long as it does not unjustifiably prejudice our avowed duty to serve the public.[23]

In 2003, we promulgated *Estrada v. Escritor*[24] which became an essential case in our growing jurisprudence on the Religion Clauses. Here, we categorically and unequivocally declared that in resolving claims involving religious freedom benevolent neutrality or accommodation, whether mandatory or permissive, is the spirit, intent, and framework underlying the Religion Clauses in our Constitution.

Benevolent neutrality, as held in *Estrada*, is an approach to the Religion Clauses which leaves room for the accommodation of religion. In explaining the concept of accommodation and how it is compatible with the Establishment Clause, we quoted the American case *Zorach v. Clauson,*[25] which said—

> The First Amendment, however, does not say that, in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one or the other. That is the common sense of the matter. Otherwise, the state and religion would be aliens to each other—hostile, suspicious, and even unfriendly.[26]

Estrada then proceeded to analyze our religion cases and declared that "the well-spring of Philippine jurisprudence on this subject is for the most part, benevolent neutrality which gives room for accommodation."[27] I agree.

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[23] *Id.* at 657.

[24] *Supra* note 7.

[25] 343 U.S. 306 (1952).

[26] *Estrada v. Escritor*, *supra* note 7 at 118-119; *Zorach v. Clauson, supra* at 312.

[27] *Supra* note 7 at 133.

Estrada has, since its promulgation, been cited by this Court in cases involving the Religion Clauses. We invoked the benevolent neutrality accommodation in *Imbong v. Ochoa, Jr.*[28] In ascertaining whether the duty to refer, under the Reproductive Health Law, unduly burdened the free exercise of religion of conscientious objectors, we applied the compelling state interest test in accordance with the benevolent neutrality approach. We ruled that conscientious objectors must be exempt from the duty to refer so as not to infringe their freedom of religion.

In my view, *Estrada* did not introduce anything new in applying benevolent neutrality in religion cases. Rather, it is an expression of the decades of jurisprudence that has persistently chosen a path where the separation of church and state may be used to create a space where religion is not stifled but is allowed to flourish.

Of course there have been cases where we refused to grant a claim based on religion. In all these cases, however, this Court found interests that justify the refusal of a claim under the Religion Clauses.

German v. Barangan,[29] a decision involving a public demonstration at the peak of anti-government rallies during the Martial Law, is one such case. Petitioners intended to pray in the St. Jude Chapel which was within the Malacañang premises. They were, however, prevented from doing so, on the ground that St. Jude Chapel was located within a Malacañang security area. Petitioners went to this Court and claimed that they should be allowed to pray inside the chapel in accordance with their freedom to practice their religion. This Court denied their petition. While the case was hinged on the petitioners supposed lack of good faith in their claim, the Court also found that even if there was good faith, the refusal to allow them within a Malacañang security area did not violate their freedom of religion. The refusal to allow them into the security area was motivated by the need

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[28] G.R. No. 204819, April 8, 2014, 721 SCRA 146.

[29] G.R. No. 68828, March 27, 1985, 135 SCRA 514.

to protect the life of the then President Marcos and his family, as well as other governmental officers transacting business in Malacañang.

In *Ang Ladlad LGBT Party v. Commission on Elections* (COMELEC),[30] we chastised the COMELEC for relying on the Holy Bible and the Koran in their decision to disqualify Ang Ladlad LGBT Party from participating in the party-list elections. We found this to be a clear violation of the Establishment Clause. The government must act for secular purposes for primarily secular effects. We explained—

> x x x Otherwise, if government relies upon religious beliefs in formulating public policies and morals, the resulting policies and morals would require conformity to what some might regard as religious programs or agenda. The non-believers would therefore be compelled to conform to a standard of conduct buttressed by a religious belief, *i.e.*, to a "compelled religion," anathema to religious freedom. Likewise, if government based its actions upon religious beliefs, it would tacitly approve or endorse that belief and thereby also tacitly disapprove contrary religious or non-religious views that would not support the policy. As a result, government will not provide full religious freedom for all its citizens, or even make it appear that those whose beliefs are disapproved are second-class citizens.
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> In other words, government action, including its proscription of immorality as expressed in criminal law like concubinage, must have a secular purpose. x x x[31]

In this case, we clarified that not all claims based on religion should be recognized. But even while we disagreed with the COMELEC, we emphasized that the imperative for the government to pursue secular purposes rather than religious ones is to avoid the endorsement of any particular religion and in effect, disapproving others. Neutrality is the stance not because the Establishment Clause requires the government to put up a wall of separation between church and state that is "high and

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[30] G.R. No. 190582, April 8, 2010, 618 SCRA 32.

[31] *Id.* at 59.

impregnable"[32] but because it is only in neutrality that freedom of religion can find expression.

In *Imbong*, we also refused a claim based on the Religion Clauses. In this case, petitioners argued that the use of contraceptives is against their religion. Thus, the state procurement of contraceptives is unconstitutional as it violates the Religion Clauses. We ruled that the question of whether the use of contraceptives is moral from a religious standpoint falls outside the province of the Court. Further, this Court invoked the Establishment Clause in denying the petitioner's claims. We explained that while "the establishment clause restricts what the government can do with religion, it also limits what religious sects can or cannot do with the government."[33] Members of a particular religion cannot ask the government to adopt their religious doctrine as the policy for everyone else. We said, "[t]o do so, in simple terms, would cause the State to adhere to a particular religion and, thus, establishing a state religion."[34] *Imbong* exemplifies the delicate balancing act involved in cases involving the Establishment Clause. It also demonstrates that in protecting the wall of separation, the goal is not to shun all religion for the sake of stifling the presence of religion in the sphere of government but rather refuse any policy that may directly or indirectly favor one religion over others.

This is the path that our jurisprudence on the Religion Clauses has taken. It is one that chooses accommodation, where there is no danger of breaching the wall of separation, instead of a blind and literal adherence to the concept of a separate church and state. To repeat, the Establishment Clause exists not for the sake of separation *per se* but as a tool to allow all religion (as well as the choice not to have one) to thrive and flourish. Our Establishment Clause, existing in the context of a unique Filipino culture, has developed its own narrative. It is this narrative that must permeate any understanding of what it means for our constitutional democracy to uphold the separation of church and state.

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[32] *Estrada v. Escritor*, *supra* note 7 at 106.

[33] *Imbong v. Ochoa, Jr., supra* note 28 at 334.

[34] *Id.*

I note, however, that the present case is one of first impression. While we have had the opportunity to rule on cases involving our Religion Clauses, these cases generally involved a challenge of an official act that threatens to burden the free exercise of religion. In the present case, this Court is asked to interpret a governmental institution's acquiescence to a religious practice and ascertain whether this acquiescence amounts to an endorsement or support for a particular region.

Our Establishment Clause finds its source in the First Amendment of the American Constitution. In several Establishment Clause cases, this Court has relied upon the guidance of American jurisprudence in appreciating the complexities of the separation of church and state. American jurisprudence has persuasive weight in this jurisdiction. More importantly, a review of relevant American cases may give us a guide on what analytical tools we can use in exploring the boundaries of permissible religious accommodation.

I highlight that the issue presented before us actually involves two matters—the constitutionality of allowing religious practice within the premises of the Quezon City Hall of Justice and of allowing Catholic images to be displayed in a particular area. Most relevant to the present case are the United State Supreme Court's rulings in matters pertaining to government entities allowing the display of religious items in their premises as well as the act of government instrumentalities of opening government activities with prayer. The leading cases of *Marsh v. Chambers,*[35] *Town of Greece v. Galloway*,[36] *Lynch v. Donnelly,*[37] and *County of Allegheny v. ACLU*[38] merit a review.

Marsh v. Chambers dealt with the constitutionality of the practice of the Nebraska Legislature of beginning its session

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[35] 463 U.S. 783 (1983).

[36] *Supra* note 1.

[37] 465 U.S. 668 (1984).

[38] 492 U.S. 573 (1989).

with a prayer by a chaplain paid by the state and with the legislature's approval. Here, the United States Supreme Court ruled that the practice did not violate the Establishment Clause. In arriving at this conclusion, the United States Supreme Court used history and the intent of the framers of the First Amendment as the framework of analysis. The United States Supreme Court found that the practice of opening the sessions of congress with a prayer has existed for two centuries. The First Congress, during whose term the language of the American Bill of Rights which includes the United States' religion clauses was finalized, adopted the policy of selecting a chaplain to open each session with a prayer. The United States Supreme Court explained—

> Standing alone, historical patterns cannot justify contemporary violations of constitutional guarantees, but there is far more here than simply historical patterns. In this context, historical evidence sheds light not only on what the draftsmen intended the Establishment Clause to mean, but also on how they thought that Clause applied to the practice authorized by the First Congress—their actions reveal their intent.[39]

The United States Supreme Court found that the unique history of opening prayers in legislative sessions and the First Amendment leads to the conclusion that the drafters of the First Amendment Religion Clauses saw no real threat to the Establishment Clause in a practice of prayer similar to that used in the Nebraska Legislature. *Marsh* also declared that the content of the prayer is not the concern of the court in the absence of any indication that the prayer opportunity has been exploited to advance or disparage any other faith or belief.

This ruling was echoed in the 2014 case *Town of Greece v. Galloway* where the United States Supreme Court upheld the practice of beginning town board meetings with a prayer led by a chosen "chaplain of the month" who may come from any religious congregation selected from a list of available ministers in the town. The practice was challenged on the ground that the prayers were sectarian and dominated by Christian themes.

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[39] *Marsh v. Chambers, supra* note 35 at 790.

The petitioner insisted that prayers must be inclusive and ecumenical so as not to associate the government with one particular religion. The United States Supreme Court found that the town board meeting opening prayer follows the tradition of the legislative prayer declared constitutional in *Marsh.* The decision also highlighted that *Marsh* did not find relevant the content of the prayer itself so long as the practice is not being used to promote or disadvantage any other religion. The validity of prayers in this particular context does not arise from the generic theism of the prayers themselves but from a finding that history and tradition have shown that this kind of practice can be accommodated without posing a threat to the Establishment Clause. *Town of Greece* further highlighted that the prayers being challenged were intended for the board members only and no member of the public was compelled to participate. The religious practice was an internal act among the town board members and not meant to promote any religion to the public. So long as the town board pursued a policy of non-discrimination and the prayers may be in accord with any religious denomination of the particular chaplain assigned to lead the opening prayer, no violation of the Establishment Clause exists. The United States Supreme Court added that non-believers may feel offended by the practice is no justification to rule that it is unconstitutional. Said the court—

> x x x Offense, however, does not equate to coercion. Adults often encounter speech they find disagreeable; and an Establishment Clause violation is not made out any time a person experiences a sense of affront from the expression of contrary religious views in a legislative forum, especially where, as here, any member of the public is welcome in turn to offer an invocation reflecting his or her own convictions. x x x[40]

While *Marsh* and *Town of Greece* involve the constitutionality of a religious practice sanctioned by the government, *Lynch* and *County of Allegheny* pertain to the constitutionality of government sanctioned displays of religious images.

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[40] *Town of Greece v. Galloway, supra* note 1.

In *Lynch v. Donnelly*, the United State Supreme Court was called upon to rule on the constitutionality of the City of Pawtucket's annual Christmas display which includes a Santa Claus house, a Christmas tree, a banner that reads "SEASONS GREETINGS," and a crèche or Nativity scene. Here, the United States Supreme Court held that the Establishment Clause does not seek to establish a regime of total separation between church and state. It explained—

> No significant segment of our society, and no institution within it, can exist in a vacuum or in total or absolute isolation from all the other parts, much less from government. "It has never been thought either possible or desirable to enforce a regime of total separation. . . ." x x x Nor does the Constitution require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any. x x x Anything less would require the "callous indifference" we have said was never intended by the Establishment Clause. x x x[41]

Thus, not every governmental action that has religious undertones must be automatically struck down as a breach of the wall of separation. In *Lynch*, the United States Supreme Court held that each case requires courts to scrutinize whether the challenged official conduct, in reality, establishes a religion or tends to do so. Each case thus requires line-drawing.[42] In this task, *Lynch* applied the test established in *Lemon v. Kurtzman,*[43] which involves an inquiry as to whether the official act has a secular purpose, whether its principal or primary effect is to advance or inhibit religion, and whether it creates an excessive entanglement of government with religion.

In the application of the Lemon Test, *Lynch* necessarily required an examination of the circumstances surrounding the challenged Christmas display. The United States Supreme Court pursued this framework of analysis in *County of Allegheny v.*

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[41] *Lynch v. Donnelly, supra* note 37 at 674; citations omitted.

[42] *Id.* at 669.

[43] 403 U.S. 602 (1971).

ACLU.[44] This case repeated and emphasized that a government's use of religious symbols is unconstitutional if it has the effect of endorsing a religious belief. Whether the use of religious symbols has this effect, in turn, depends upon the context. Here, the United States Supreme Court ruled that the display of a crèche at the grand staircase of the county courthouse violated the Establishment Clause. Its setting clearly signified the government's endorsement of a particular religious message. *County of Allegheny*, however, declared valid the display of a menorah in front of the city-county building. Relying on an analysis of setting and context, particularly that the menorah was displayed during the winter holidays along with a Christmas tree and a sign that reads "Salute to Liberty," the United States Supreme Court found that taken as a whole, the religious display does not amount to an endorsement of a religion but only recognizes that both Christmas and Chanukah are part of the same winter holiday season.

These four cases capture the doctrine and the framework of analysis that ought to apply in cases where the state uses religious symbols. The Establishment Clause is breached when the state, by using a religious symbol, effectively endorses religion. In determining if this endorsement exists, reliance has been made on history insofar as it reflects the intent of the drafters of the Religion Clause. The particular setting of the religious display is also taken into account in order to ascertain if it indeed amounts to the sponsorship of religion.

It is within these contexts that this Court must proceed to apply the principles of the Establishment Clause to the present case.

Majority of the country's population believe in some form of religion. Out of around 92 million Filipinos, about 74 million are Catholics and around 5 million are Muslims. There are also millions belonging to the Christian faith such as the *Iglesia Ni*

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[44] *Supra* note 38.

Cristo and the Philippine Council of Evangelical Church.[45] While these numbers alone do not justify any erosion of the wall of separation, they are, however, an indication of the inevitable link between this government and the various religious faiths present among its people. The duty of the state, as mandated by the Religion Clauses of the Constitution, is not to endeavor to completely rid itself of any traces of respect for religion, but to pursue a policy where the freedom to believe or not to believe may thrive.

Thus, historically, the government has accommodated religion in the public space. This is seen in the various national holidays declared in the name of important religious events such as *Eid'l Fitr*, *Eidul Adha*, Maundy Thursday, Good Friday, and All Saints' Day.

Even the oath of office prescribed for government officials end with the phrase "So help me God." While government officials are free to omit this line, it is, nevertheless, an indication that a display of faith in a supreme being is not completely barred from the public space.

Further, the Preamble of the Constitution also mentions an Almighty God. In fact, the sessions of the 1986 Constitutional Commission always began with a prayer. This manifests how the drafters of the Constitution understood the Establishment Clause. The acknowledgment of religion, the acceptance that ours is a generally theistic society, the agreement that the phrase "Almighty God" appear in the Preamble of the Constitution, and the shared participation in prayer at the start of every Constitutional Commission session all shed light as to how the Establishment Clause was intended to be construed. The framers of the Constitution themselves did not perceive the acknowledgment of religion as a threat to the separation of church and state. The records of the debates on the floor of the Constitutional Commission show the deliberateness of the

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[45] 2015 Philippine Statistical Yearbook, Philippine Statistics Authority, October 2015, <https://psa.gov.ph/sites/default/files/ 2015%20PSY%20PDF.pdf> (visited November 28, 2016).

inclusion of the term "Almighty God" in the Preamble. While the Committee on the Preamble initially used the term Divine Providence and proposals were made to change it to "Lord of History," the phrase "Almighty God" eventually found its way into the Preamble as we know it now. The drafters of the Constitution agreed that this phrase more accurately reflected the spirit and culture of the Filipinos and was accepted both by the Christian and Muslim representatives in the Constitutional Commission.[46]

In fact, our Constitution, as well as its predecessors, the 1935 and the 1973 Constitutions, all contain provisions granting tax exemptions to religious institutions. These have never been seen as endangering the wall of separation between church and state.

Even this Court has been consistent in recognizing the role of religion in our society. The Supreme Court arms and great seal contains an image of the ten commandments described in Section 1 of Rule 136 of the Rules of Court as "x x x two tablets containing the commandments of God x x x."[47] Similarly, the entrance to our own Supreme Court Old Building has a statue of Moses and the Ten Commandments.

In the United States, the display of the Ten Commandments in government property has been found constitutional by the United States Supreme Court. In *Van Orden v. Perry,*[48] the United States Supreme Court held that the display of a monument of the Ten Commandments in the Texas State Capitol does not violate the Religion Clauses. The United States Supreme Court further noted that even its own courtroom—

> x x x Moses has stood, holding two tablets that reveal portions of the Ten Commandments written in Hebrew, among other lawgivers in the south frieze. Representations of the Ten Commandments adorn the metal gates lining the north and south sides of the Courtroom as

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[46] I RECORD, CONSTITUTIONAL COMMISSION (June 11, 1986).

[47] RULES OF COURT, Rule 136, Sec. 1.

[48] 545 U.S. 677 (2005).

well as the doors leading into the Courtroom. Moses also sits on the exterior east facade of the building holding the Ten Commandments tablets.

The United States Supreme Court stated that while Moses and the Ten Commandments are religious symbols, they also possess significance in the country's national heritage and history. That it is placed in the United States Supreme Court courtroom is a recognition of this significance. The same is true in the case of this Court's arms and great seal as well as the image of Moses in the entrance steps of our building.

Further, we have consistently chosen a policy of benevolence to the practice of various religions. The Court has an Ecumenical Prayer[49]—a prayer carefully crafted to reflect and represent the various faiths in the judiciary and in the country. This prayer is used at the beginning of sessions of this Court, in the lower courts, and in flag ceremonies. As a matter of fact, this Court begins its sessions whether *en banc* or in division by reciting this Ecumenical Prayer. This same Ecumenical Prayer is printed in the official Supreme Court calendars distributed among Supreme Court employees and courts nationwide.

Nevertheless, it is important to highlight that the Court has never made this prayer mandatory. We also have the Centennial Prayer for the Courts[50] (Centennial Prayer) which this Court

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[49] See Supreme Court Human Resources Manual, 2012, p. xiv.
The Ecumenical Prayer for the Courts

"Almighty God, we stand in Your holy presence as our Supreme Judge. We humbly beseech You to bless and inspire us so that what we think, say, and do will be in accordance with Your will. Enlighten our minds, strengthen our spirit, and fill our hearts with fraternal love, wisdom and understanding, so that we can be effective channels of truth, justice, and peace. In our proceedings today, guide us in the path of righteousness for the fulfillment of Your greater glory. Amen."

[50] Supreme Court Memorandum Circular No. 001-2001.
Centennial Prayer for the Courts

Almighty God, we stand in Your holy presence as our Supreme Judge. We humbly beseech You to bless and inspire us so that what we think, say, and do will be in accordance with Your will.

encourages to be recited at the start of sessions in this Court and in lower courts. As in the Ecumenical Prayer, this Centennial Prayer was crafted after consultations with various major religious denominations. At no point, however, has it been made mandatory. As Supreme Court Memorandum Circular No. 001-2001 states, its regular recitation is voluntary and no administrative sanction will be imposed on those who refuse to use it for any personal reason.

In accordance with the protection accorded to freedom of religion, every person in the judiciary is free to pray in the way he or she desires or not at all. The Ecumenical and Centennial prayers exist merely as options for members and employees of the judiciary to express their prayer in one particular way. These prayers exist to support the practice of religious faith but they do not impose a monopoly or a singular standard on the proper expression of prayers. Consistent with the Religion Clauses, these practices allow all religions to flourish while leaving sufficient room for people to practice their faith or lack thereof in the manner they deem proper.

Supreme Court employees also hold first Friday masses within the Court premises. These employees have done so voluntarily during lunch break for years now. This Court has not deemed it necessary to prevent them from doing so. We merely regulate the time and place for the holding of the masses so as to insure that there will be no prejudice to public service. It is worth highlighting that this Court, while it has not prohibited the holding of first Friday masses, has refused to designate one particular room where the masses may be held. These employees are free to hold their masses during lunch break within the Court's premises provided that the area they intend to use is not currently needed for any official Court activity. The Court has, and continues to exercise, the right to regulate the use of rooms within the Court premises for the purpose of these first Friday

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Enlighten our minds, strengthen our spirit, and fill our hearts with fraternal love, wisdom and understanding, so that we can be effective channels of truth, justice, and peace. In our proceedings today, guide us in the path of righteousness for the fulfillment of Your greater glory. Amen.

masses. To me, this practice is an eloquent example of the proper understanding of our Religion Clauses and their narrative within the unique Filipino culture.

All these are efforts to recognize the unique role that religion plays in the lives of Filipinos. These efforts do not espouse one particular religion or insist on theism over atheism. These practices are the Court's contribution to giving life to the mandate of the Constitution's Religion Clauses—the creation of space where all religions may exist while at the same time giving the people absolute freedom to believe and practice their faith in the manner they deem proper or to have none at all.

Further, this long history of the presence of religion in the conduct of the judiciary's affairs speaks volumes of its perceived effect on the constitutional wall of separation. There is no indication that these practices have led to the establishment of a religion in the judiciary or the mandatory participation of non-Catholics or atheists in religious activities. In the words of United States Supreme Court Justice Oliver Wendell Holmes, "a page of history is worth a volume of logic."[51]

These and our consistent jurisprudence all point to the conclusion that the Establishment Clause does not mandate an automatic finding of unconstitutionality whenever the State engages in an activity that has religious undertones. Whether a government practice breaches the wall of separation depends on whether the effect of that practice is to endorse a religion. This analysis then compels us to examine the context of a particular case.

I note that in 2003, the Office of the Chief Attorney recommended to then Chief Justice Hilario G. Davide that the request to hold a one-day vigil in honor of the Our Lady of Caysasay be rejected on constitutional grounds. Specifically, the Chief Attorney opined that this would violate the wall of separation between the Church and the State. Certainly while the recommendations of the Chief Attorney, and even of the

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[51] *New York Trust Co. v. Eisner*, 256 U.S. 345 (1921).

Court Administrator, are given due consideration, they are nonetheless not binding on the Supreme Court. How the Constitution should be applied in a matter involving the administration of our courts is a matter that ultimately lies within the province of the Supreme Court. While recommendations of the Court Administrator and Chief Attorney are important, they are not definitive. This Court determines for itself what the rule is.

To facilitate our discussion, we repeat the facts of this case. There exists a practice among certain Catholic employees of attending mass within the Quezon City Hall of Justice. It appears that attendance in the mass is purely voluntary and there has been no official institutionalization of the practice by virtue of any act from any of the officials of the courts in Quezon City. In other words, this case involves a group of employees who have decided to come together at assigned hours during the workweek to practice their faith. It also appears from the records that these Catholic masses are allowed only during lunch break and for a period of 30 minutes. There is a designated area in the basement of the Quezon City Hall of Justice for this activity. There are religious icons and objects displayed during the mass. There is no proof that these masses have affected the delivery of public service or disrupted judges and employees in their work. There is no proof that the Quezon City trial courts have spent money to support the Catholic masses being held or that it has made a policy to actively provide resources for the continuous conduct of this religious activity. There is no showing that the specific area has been made exclusive for the use of the Catholic employees. There is also no indication that other employees who are non-Catholics are prevented from practicing their faith within the premises. In fact, Executive Judge Lutero explains that Muslim employees are allowed to pray while Christians are allowed to hold bible studies in their offices.

Mr. Valenciano would have us put an end to this activity on the ground that our acquiescence to this practice amounts to a violation of the Establishment Clause. I find that no violation exists.

At the risk of repetition, the responsible officials in the Quezon City Hall of Justice never ordered the holding of the Catholic masses. Instead, the Catholic court employees themselves decided to organize the activity. The trial courts never officially sanctioned these Catholic masses nor have they actively supported it. It is quite a stretch to insist that though the trial courts have not been officially participating at all in any of these activities, they are endorsing the Catholic faith.

Further, there can be no endorsement of the Catholic faith when the masses are not being held to send a religious message to the public. Attending a Catholic mass is a central tenet in the Catholic faith. The Catholic court employees who regularly go to mass do not do so to communicate a message but for purely personal reasons between them and their God. As the Catholic masses are being held during lunch break, there is little opportunity for litigants and other people visiting the Quezon City Hall of Justice to actually witness the practice. More importantly, no member of the public and the non-Catholic employees has been coerced to participate in the masses.

Moreover, that these Catholic masses are being held within the Quezon City Hall of Justice is, by no means, an indication that the trial court endorses Catholicism. For as long as these Catholic masses are not being used to discriminate against any other religion or against the choice to believe, the Quezon City trial courts' acquiescence ought not to be interpreted as endorsing a religion. Rather, the Quezon City trial courts are simply allowing people of a particular faith to practice it. In *Re: Request of Muslim Employees,* we allowed our Muslim employees to hold office within flexible hours during the period of *Ramadan.* We have pursued a policy of creating a work environment where our employees may be free to worship as they see fit, the only limitation being that public service is not prejudiced. As the Catholic masses in this case are being held during lunch break and only for 30 minutes, the Catholic employees who persist in pursuing the practice of their faith cannot be said to have sacrificed their duty to serve the public.

I highlight that even the framers of our Constitution began the sessions of the Constitutional Commission with a prayer. They did not find this open profession of their faith offensive to the Establishment Clause that they drafted into constitutional law. We can compare the religious significance of an opening prayer during the sessions of the Constitutional Commission to the holding of masses at the Quezon City Hall of Justice premises. If prayer participated in by the drafters themselves was not deemed as a threat to the separation of church and state, it escapes reason why a trial court's acquiescence to the practice of its employees of voluntarily holding mass during lunch break should be interpreted as constituting a violation. The drafters of the Constitution have given us a guidepost in exploring the bounds of the Establishment Clause. We must give life to their intent.

That there are churches near the Quezon City Hall of Justice or that it is not mandatory in the Catholic faith for its members to attend mass every day is no reason for this Court to interfere with the religious practice of the Catholic employees. In the absence of any indication that these masses are being used to discriminate against non-Catholics and that attendance in these masses prejudice public service, it is in the best interest of the Court to allow sufficient public space for the practice of religion. It is not for us to determine whether the expression of faith of these Catholic employees in choosing to attend mass every day is unreasonable or excessive. The manner and frequency by which these Catholic employees choose to express their faith are matters between them and their God. It is not our place to say that it is too much or that it is unnecessary. Our duty is to grant permissive accommodation when there is no breach of the wall of separation.

That Mr. Valenciano and other non-Catholics may be offended by these Catholic masses is no reason to declare the practice unconstitutional. Religious tolerance, a doctrine essential to our religious clauses, mandates that, within the bounds of law, we give space for religion even if to us, it is unusual or unnecessary. As the United States Supreme Court pronounced

in *Town of Greece*, offense itself is not sufficient for a finding of unconstitutionality. We protect speech even if it is offensive as it is essential to the freedom of speech. The Bill of Rights, in truth, realizes its purpose and reaffirms its value in instances where what is sought to be protected is the exercise of a right that does not seem traditional, acceptable, or normal. In the realm of religion, it is in the lawful practice of religious activities that may seem odd or unusual that we are challenged, as a society, to further extend the limits of our religious tolerance. It is in questions like this that we are called to choose between an interpretation of the law that is humane or one that is literal, strict, and blind to the dictates of conscience. The Establishment Clause, as well as the Bill of Rights, speaks to our humanity. It is this humanity, rather than a blind adherence to an overly literal interpretation of the law, that must prevail.

Further, there is an important secular purpose achieved when employees are allowed to practice their religion during their free time in the workplace, under defined restrictions that ensure they do not obstruct their delivery of public service. The Constitution declares that public office is a public trust. In *Aglipay*, we recognized that religion exerts an elevating influence in human affairs because it instills into human minds the purest principles of morality.[52] Among the many general concessions indiscriminately accorded to religious sects and denominations, we declare certain religious holy days as legal holidays "because of the secular idea that their observance is conducive to beneficial moral results."[53] Allowing the faithful among public servants to hear mass in the workplace, insofar as it renews in them daily their desire to achieve the highest principles of morality, can only better equip them to meet their secular obligation to be at all times accountable to the people. That other public servants may draw their sense of morality from other faiths, or no religion at all, or find no need for any morality to define or guide their discharge of the public trust, is of no moment. This is what religious tolerance is all about.

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[52] *Supra* note 8 at 206.

[53] *Id.*

The Supreme Court not only dispenses justices through decisions, we also have the obligation to manage our human resources. The same is true for lower courts. Part of our duty as administrators and managers is to motivate our employees, maximize their skills, and create a work environment that encourages them to do their best in the service of the public. This is the reason why we organize sports fests, celebrations, and events within our premises and support our employees' decision to form groups that cater to their interests. When our employees feel that we look after their interests and well-being, they are motivated to work harder and to choose to stay in the judiciary.

From this management perspective, allowing Catholic employees to group together in prayer and in Catholic masses serves an important human resources purpose. By choosing to allow Catholic masses instead of stifling them, these Catholic employees are made to feel that their spiritual well-being, on a non-discriminatory basis, is important to the Judiciary. At the same time, the Court, as administrator, must emphasize that all religions represented within the Judiciary are free to express their religious beliefs, provided they similarly do not interfere with public service and do not coerce others to participate. In the same vein, non-believers can pursue their own interests without prejudice or bias against them. In a very real sense, choosing not to interfere with what employees decide to do in their free time, whether it is to attend mass, pray, or participate in sports activities, provided it does not affect their work and the delivery of public service, carries an important secular purpose. It creates a satisfying working environment for our employees who can then perform their work with better efficiency.

Thus, while Justice Leonen argues that our decision to allow the Catholic masses provided they do not interfere with public service violates Section 29 of Article VI of the Constitution, I view the matter differently. This is not a circumstance where the Judiciary is consciously or purposively designating a particular public property for religious purposes. This is, in

truth, a matter of allowing employees to pursue an activity that, while it may relate to religion, ultimately benefits the interest of the Judiciary. It ensures that we keep employee morale high and reaffirms that we care enough about our employees and their spiritual pursuits.

Further, there is no breach of the proscription against using public property to benefit a religion. I see no distinction between allowing employees to group together to attend mass in the Quezon City Hall of Justice in their free time and allowing them to use their workspace to pray, which Justice Leonen concedes in his dissent as valid. These two situations involve similar religious acts done in government property. It is not as if we allowed or funded the construction of a particular portion of the Quezon City Hall of Justice for the sole purpose of allowing Catholic Masses to be held there. The Quezon City Hall of Justice's basement remains to be an area dedicated for the use of the courts. That it sometimes becomes a venue, for a brief thirty-minute period during lunch break, of the activities of certain employees does not change the situation into one where the judiciary is allotting a public property for the benefit of a religion.

I note, however, that the matter of the display of Catholic images may be a different matter. I agree with the recommendation of the Court Administrator that Catholic images used for the Catholic mass must not be permanently stationed in the area. This is to avoid any impression that the Quezon City Trial Courts are endorsing a particular religion by allowing the building of a chapel exclusive for the use of Catholic employees. There is here a greater danger that we become entangled in the religious practice of Catholicism as well as greater likelihood that we be misconstrued to espouse Catholicism as a favored religion. This threatens to breach the wall of separation, and thus must be avoided.

To ensure that no espousal or sponsoring of the Catholic faith arises out of this case, the Executive Judges of the Regional Trial Court and Municipal Trial Court of Quezon City should be allowed to regulate the time, place, and manner of the holding

of the Catholic masses at the Quezon City Hall of Justice. While the Catholic mass is traditionally held during lunch break at the basement of the Quezon City Hall of Justice, the Executive Judges of the trial courts should retain the authority to order its transfer to another area or its conduct at another time before or after office hours, when public service so demands.

Allowing Executive Judges to regulate the time, place, and manner of the Catholic masses by no means leads to excessive entanglement by the government in religious matters.

Excessive entanglement is part of a three part-test now known as the Lemon Test first used by the United States Supreme Court in *Lemon v. Kurtzman*.[54] *Lemon* involves the constitutionality of government aid to church-related elementary and secondary schools. To resolve the constitutional question presented before it, the United States Supreme Court applied a three-part test. A law which involves direct contact with religion is valid if, first, it has a secular legislative purpose. Second, the law's principal and primary effect must be one that neither advances nor inhibits religion. Third, the law must not foster an "excessive government entanglement with religion."[55] As to the third part of the test, now famously known as the excessive entanglement test, *Lemon* identified the criteria that make a law or government act one that excessively entangles the State in church affairs. These criteria are the "character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and religious authority."[56]

In *Lemon*, the United States Supreme Court found that the government aid granted to church-related schools led to excessive entanglement. It found that the schools that stood to benefit from the financial aid were characterized by "substantial religious activity and purpose." Further, it involved aid to schools where

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[54] *Supra* note 43.

[55] *Id.,* citing *Walz v. Tax Comm'n of City of New York*, 397 U.S. 664 (1970).

[56] *Lemon v. Kurtzman, supra* note 43.

two-thirds of the teachers were nuns and the students were of an impressionable age. Furthermore, even when the law involved provided for means so that the State may ensure that no religious teaching is encouraged, these means would inevitably excessively entangle the government in religious matters.[57]

Nevertheless, *Lemon* recognized that "[s]ome relationship between government and religious organizations is inevitable." Thus, it held that "[f]ire inspections, buildings and zoning regulations, and state requirements under compulsory school attendance laws are examples of necessary and permissible contacts."[58]

In later cases where the United States Supreme Court found the need to apply the Lemon Test, the issue usually revolved around the grant of government aid to particular institutions or activities. Thus, the question of excessive entanglement can be said to arise when the circumstances pertain to a positive government act affecting identified beneficiaries.

In my view, there can be no talk of excessive entanglement in a case as the one before us where the judiciary, in fact, does nothing to directly support any religious organization. The issue presented to us by Mr. Valenciano's letter is whether we must allow the Catholic masses voluntarily held by Catholic employees in their own free time or interfere in their religious practice because these are offensive to non-Catholics. There is no direct government action or policy involved. As *Lemon* teaches, there is a whale of a difference between excessive entanglement and necessary and permissible contact.

Moreover, even if we gratuitously assume that there is a question of excessive entanglement in this case, we can proceed to look at the criteria set forth in *Lemon* and arrive at the conclusion that no excessive entanglement exists.

First, as to the nature and character of the beneficiaries, allowing the Catholic masses does not benefit one particular

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[57] *Id.*

[58] *Id.*

religion. Allowing employees to practice their faith in the matter they deem fit, provided it does not interfere with their work and the freedom of religion of other employees, contributes to their well-being as our employees and is ultimately beneficial to us.

Second, as to the nature of the aid granted. The facts show that there truly is no aid being given by the judiciary in allowing the Catholic masses. The Quezon City trial courts have not required any attendance in the masses. They have not spent government funds for these activities. They have refused to dedicate any particular portion of the Quezon City Hall of Justice to these religious pursuits.

Third, the conduct of these Catholic masses creates no relationship between the judiciary and the Catholic Church. Even if the Executive Judges are to regulate the time, place, and manner of the conduct of these masses, any entanglement is so *de minimis* and by no stretch of the imagination can it be deemed as excessive. This is similar to zoning regulations which the United States Supreme Court held in *Lemon* as permissible contact between the State and the church. To assume that ascertaining whether the basement of the Quezon City Hall of Justice is available on lunch time for the conduct of a particular group of employees' activity will lead to excessive entanglement and will distract our judges from their duty is presumptuous and unfair. It assumes that our judges are incapable of so minimal a task as determining whether the activity of a group of Catholic employees may be held on a particular place in the Quezon City Hall of Justice on a particular day without immersing themselves in religious protestations. It also assumes that our judges are so easily distracted so as to be unable to dispense justice whenever they are saddled with minor administrative concerns.

In truth, the question asked of us in this case is whether we should leave the Catholic employees in the Quezon City Hall of Justice to practice their faith in the manner they seem fit or whether we should interfere with their voluntary and private activity because it might be offensive to other people of a different

religion or those with none at all. Our Constitution compels us to rule that we must let these employees be. There is no constitutional duty to prevent them from holding these masses. That it offends non-participants who may happen to witness the event is not a constitutionally recognized ground for regulating religious freedom. That some of us may not like something does not mean that we should stop it because it offends our sensibilities. The Constitution deals in matters far more important than our feelings and sentiments. It deals with fundamental freedoms that cannot be trifled with, much less on the basis of our personal biases.

Thus, I submit that the Catholic Mass regularly held at the Quezon City Hall of Justice should be allowed to continue subject to the conditions prescribed by the Office of the Court Administrator.

I vote to deny the prayer in Mr. Valenciano's letter. I agree with the *ponencia* that the Catholic masses and other religious practices in the Quezon City Hall of Justice should be allowed subject to regulation.

DISSENTING OPINION

LEONEN, *J.*:

> *"Imagine there's no countries, it isn't hard to do.*
> *Nothing to kill or die for, and no religion, too.*
> *Imagine all the people living life in peace..."*
>
> - Lennon, John. "Imagine." *Imagine*. Ascot, 1971. Vinyl.

> "*But Jesus, aware of their malice, said, 'Why put me to the test, you hypocrites? Show me the money for the tax.' And they brought him a coin. And Jesus said to them, 'Whose likeness and inscription is this?' They said, 'Caesar's.' Then he said to them, '**Render therefore to Caesar the things that are Caesar's, and***

to God the things that are God's.' When they heard it, they marveled; and they left him and went away."

- Matthew 22:15-22[1]

Tolerating and allowing court personnel to hold and celebrate daily masses within public Halls of Justice is a clear violation of the Constitutional prohibition against the State's establishment of a religion. It has no secular purpose other than to benefit and, therefore, promote a religion. It has the effect of imposing an insidious cultural discrimination against those whose beliefs may be different. Religious rituals should be done in churches, chapels, mosques, synagogues, and other private places of worship.

To provide that all faiths of all denominations may likewise avail of the same public space within courts of law is a painful illusion. Apart from violating Sections 5 and 29 (2) of Article III of the Constitution, it is a privilege that is not available to those who profess non-belief in any god or whose conviction is that the presence or absence of god is unknowable. It likewise undermines religious faiths, which fervently believe that rituals that worship icons and symbols are contrary to their conception of god.

Furthermore, the majority opinion invites judges to excessively entangle themselves with religious institutions and worship. Decisions on the duration, frequency, decorations, and other facets of religious rituals are not judicial functions. This also should certainly not be a governmental one.

By holding daily Catholic masses or any religious ritual within court premises, courts unnecessarily shed their impartiality. It weakens our commitment to protect all religious beliefs.

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Mr. Tony Q. Valenciano (Mr. Valenciano) wrote this Court in 2009[2] and again, in 2010,[3] questioning the practice of holding

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[1] Revised Standard Version Catholic Edition.

[2] *Rollo,* pp. 20–22.

[3] *Id*. at 34.

Roman Catholic masses at the basement of the Quezon City Hall of Justice. He submitted that the basement floor of the court of law was practically converted into a Roman Catholic chapel, with religious icons permanently displayed, in violation of the separation of church and State[4] and the constitutional prohibition on the appropriation of public money for the benefit of a sect, church, denomination, or any other system of religion.[5]

Mr. Valenciano's letters were indorsed to Executive Judge Fernando T. Sagun, Jr. (Executive Judge Sagun, Jr.) of the Regional Trial Court and Executive Judge Caridad W. Lutero (Executive Judge Lutero) of the Metropolitan Trial Court of Quezon City for comment.[6] The Executive Judges shared the view that there was nothing constitutionally infirm in celebrating daily masses at the Quezon City Hall of Justice during lunch break.

Executive Judge Sagun, Jr.'s Comment[7] discussed the measures already implemented to address Mr. Valenciano's specific complaints, such as the shortening of masses to 30 minutes. For her part, Executive Judge Lutero maintained that court personnel must be allowed to freely exercise their respective religions:

The undersigned finds no reason to discontinue the masses being held at the basement since they do not disturb the proceedings of the

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[4] CONST., Art. II, Sec. 6.

[5] CONST., Art. VI, Sec. 29(2) provides:

SECTION 29.

. . . . . .

(2) No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.

[6] *Rollo,* p. 8.

[7] *Id.* at 10–12.

court and are held during lunch break. **As we all know, the Roman Catholics express their worship through the holy mass and to stop these would be tantamount to repressing the right of those holding the masses to the free exercise of their religion. Our Muslim brethren who are government employees are allowed to worship their Allah even during office hours inside their own offices. The Seventh Day Adventists are exempted from rendering Saturday duty because their religion prohibits them from working on a Saturday. Even Christians have been allowed to conduct their own bible studies in their own offices. All these have been allowed in respect of the worker's right to the free exercise of their religion.** I therefore see no reason why we should stop our Catholic brethrens (sic) from exercising their religion during lunch breaks.[8] (Emphases provided)

The views of Executive Judges Sagun, Jr. and Lutero are inconsistent with the view of the Office of the Chief Attorney.

In a September 12, 2003 Memorandum for Chief Justice Hilario G. Davide, Jr., the Office of the Chief Attorney recommended to deny, on constitutional grounds, the request of Rev. Fr. Carlo M. Ilagan to hold a one-day vigil in honor of Our Lady of Caysasay within the premises of this Court. Said the Office of the Chief Attorney:

> [T]he Court is not an ordinary government department. It is the recognized bulwark of justice and the rule of law, with its much vaunted independence, impartiality, and integrity. It thus behooves the Court to consider the constitutional and legal issues surrounding the request for the conduct in its premises of vigil for a religious image.
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> Article II of the Constitution declares, as one of the policies of the State, the inviolability of the separation of Church and State.
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> In consonance therewith, the Bill of Rights of the Constitution states:
>
> > Sec. 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship,

[8] OCA Memorandum dated August 7, 2014, p. 11.

without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

This provision is a reproduction of Section 8, Article IV of the 1973 Constitution, and Section 1 (7) of the 1935 Constitution. Its basic principle regarding religions is the "establishment clause" provided for in the first sentence of the section. The "establishment clause" is reiterated in Section 29 (2) of Article VI of the Constitution in the form of a prohibition against the enactment of laws that support any religion. Thus:

Sec. 29 (1) … ... ...

(2) No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.

The constitutional provision on religious freedom in the Bill of Rights has two aspects: freedom of conscience and freedom to exercise the chosen form of religion. Freedom to believe is absolute while freedom to act on the belief is not. Conduct remains subject to regulation and even prohibition for the protection of society.

In *Gerona v. Secretary of Education,* the Court, holding that saluting the flag does not involve a religious ceremony and hence the requirement that students should attend the flag ceremony does not violate the religious freedom of Jehovah's Witnesses, likewise said:

…But between the freedom of belief and the exercise of said belief, there is quite a stretch of road to travel. If the exercise of said religious belief clashes with the established institutions of society and with the law, then the former must yield and give way to the latter. The Government steps in and either restrains said exercise or even prosecutes the one exercising it.

The overt acts in pursuit of religious belief are thus subject to regulation by the State.

No case has yet been filed in this Court to restrain an act similar to the subject of the instant request; neither has there been an instance when this Office was required to comment on a similar request. However, an American decision regarding the placing of a religious item in a courthouse is of persuasive effect as far as this jurisdiction is concerned.

In *G. County of Allegheny v. American Civil Liberties Union*, since 1981 the county of Allegheny had been permitting the Holy Name Society, a Roman Catholic Church group, to display a crèche in the County Courthouse during the Christmas holiday season. The crèche, a visual representation of the nativity scene, was placed at the Grand Staircase, the most public part of the County Courthouse which was used as a setting for the county's annual Christmas carol program. In ruling that the display of the crèche had the effect of *endorsing religious beliefs* in violation of the Establishment Clause, the court said:

> …There is no doubt, of course, that the crèche itself is capable of communicating a religious message…. Indeed, the crèche in this lawsuit uses words, as well as the picture of the nativity scene, to make its religious meaning unmistakably clear. "Glory to God in the Highest!" says the angel in the crèche – Glory to God because of the birth of Jesus. This praise to God in Christian terms is indisputable religious – indeed sectarian – just as it is when said in the Gospel or in a church service.
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> … … …
>
> Nor does the fact that the crèche was the setting for the county's annual Christmas carol-program diminish its religious meaning. First, the carol program in 1986 lasted only from December 3 to December 23 and occupied at most two hours a day…. The effect of the crèche on those who viewed it when the choirs were not singing – the vast majority of the time – cannot be negated by the presence of the choir program. Second, because some of the carols performed at the site of the crèche were religious in nature, those carols were more likely to augment the religious quality of the scene than to secularize it.
>
> Furthermore, the crèche sits on the Grand Staircase, the "main" and "most beautiful part" of the building that is the seat of county government…. No viewer could reasonably think that it occupies this location without the support and approval of

the government. Thus, by permitting the "display of the crèche in this particular physical setting,"… the county sends an unmistakable message that it supports and promotes the Christian praise to God that is the crèche's religious message.

The fact that the crèche bears a sign disclosing its ownership by a Roman Catholic organization does not alter this conclusion. On the contrary, the sign simply demonstrates that the government is endorsing the religious message of that organization, rather than communicating a message of its own. But *the Establishment Clause does not limit only the religious content of the government's own communications. It also prohibits the government's support and promotion of religious communications by religious organizations*…. Indeed, the very concept of "endorsement" conveys the sense of promoting someone else's message. Thus, by prohibiting governmental endorsement of religion, the Establishment Clause prohibits precisely what occurred here: the government's lending its support to the communication of a religious organization's religious message.

Finally, the county argues that it is sufficient to validate the display of the crèche on the Grand Staircase that the display celebrates Christmas, and Christmas is a national holiday. *This argument obviously proves too much. It would allow the celebration of the Eucharist inside a courthouse on Christmas Eve. While the county may have doubts about the constitutional status of celebrating the Eucharist inside the courthouse under the government's auspices,… this Court does not.* The government may acknowledge Christmas as a cultural phenomenon, but under the First Amendment it may not observe it as a Christian holy day by suggesting that people praise God for the birth of Jesus.

In sum, *Lynch* teaches that government may celebrate Christmas in some manner and form, but not in a way that endorses Christian doctrine. Here, Allegheny County has transgressed this line. It has chosen to celebrate Christmas in a way that has the effect of endorsing a patently Christian message: Glory to God for the birth of Jesus Christ. Under Lynch, and the rest of our cases, nothing more is required to demonstrate a violation of the Establishment Clause. The display of the crèche in this context, therefore, must be permanently enjoined.

When the image of Our Lady of Manaoag was once brought to the Court, it was displayed at the lobby of the second floor of the Old Supreme Court Building. The choice of that area could not have been made without the permission of the Court and/or its proper officials. The vigil conducted entailed praying the rosary, a form of prayer of Roman Catholics, by groups of employees or by offices scheduled at an hourly basis. A vigil would thus involve not only the display of a religious image but the performance of a religious act. Hence, it is undeniable that the "visit" of the image of Our Lady of Caysasay would involve likewise the use of the Court's properties, resources, employees, and official working time.

There is likewise no denying that should the instant request be granted, the Court would "endorse" the Roman Catholic religion in violation of the Constitution. By allowing the "visit" of the image in the Court, it would convey the message that the Virgin Mother it represents is, in Fr. Ilagan's words, the "Advocate of Faith," specially the Roman Catholic Church.

Although it is true that other Christian groups or sects are allowed to hold Bible-reading and other similar activities within Court premises, it appears that other religious groups have not made similar requests for the conduct of their religious services. In the event that such requests are made, the Court would have to grant such requests and thus cater to the needs of all religious persuasions, lest it be charged with favoritism and partiality. Obviously, the grant of such requests would result in the sacrifice of services that are needed in the exercise of the Court's constitutional duties and responsibilities. It is thus high time that the Court clearly defines [a] policy statement founded on pertinent provisions of the Constitution, its position regarding the holding of religious practices and activities in Court premises.

The denial of the instant request on constitutional grounds is imperative but it must be stressed that such denial does not in any way reflect the religious fervor or lack of it of the Members of the Court and its officials and employees who are Roman Catholics. Their personal beliefs and official acts are distinct and separate.

The denial is likewise impelled by the need to prevent the cropping up of another issue against the Court that militant non-Catholics may pick up and raise publicly to the detriment of the Court, notwithstanding its good faith and intention.[9] (Emphasis in the original; citations omitted)

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[9] OCAT Memorandum dated September 12, 2013, pp. 2–5.

II

On the other hand, the Office of the Court Administrator argued for the dismissal of the complaints of Mr. Valenciano in an August 7, 2014 Memorandum addressed to Chief Justice Maria Lourdes P. A. Sereno.

The Office of the Court Administrator recommended that the daily Roman Catholic masses at the Quezon City Hall of Justice be allowed, subject to the close regulation and monitoring by the Quezon City Executive Judges and so long as "(a) the public is not unduly inconvenienced by the exercise thereof; (b) it does not adversely affect and interrupt the delivery of public service; and (c) display of religious icons are limited only during the celebration of such activities so as not to offend the sensibilities of members of other religious denominations or the non-religious public."[10]

In making its recommendations, the Office of the Court Administrator cited *Estrada v. Escritor*[11] where this Court, speaking through Justice, subsequently Chief Justice, Reynato S. Puno, held that the religion clauses of our Constitution are to be read and interpreted using the benevolent neutrality approach. The Office of the Court Administrator explained:

> [T]he principle of Separation of Church and State, particularly with reference to the Establishment Clause, ought not to be interpreted according to the rigid standards of **Separation**. Rather, the state's *neutrality* on religion should be *benevolent* because religion is an ingrained part of society and plays an important role in it. The state therefore, instead of being belligerent (in the case of **Strict Separation**) or being aloof (in the case of **Strict Neutrality**) toward religion should instead interact and forbear.[12] (Emphasis in the original)

III

The majority essentially agrees with the recommendation of the Office of the Court Administrator. According to the

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[10] OCA Memorandum dated August 7, 2014, p. 16.

[11] 455 Phil. 411 (2003) [Per *J.* Puno, *En Banc*].

[12] OCA Memorandum dated August 7, 2014, p. 9.

majority, our State adopts the policy of accommodation; that despite the separation of church and State required by the Constitution, the State may take religion into account in forming government policies not to favor religion but only to allow its free exercise.[13] The majority cites as bases *Victoriano v. Elizalde Rope Workers Union*,[14] where this Court allowed the exemption of members of Iglesia ni Cristo from closed shop provisions; and *Ebralinag v. Division Superintendent of Schools of Cebu*,[15] where this Court allowed the exemption of members of Jehovah's Witnesses from observance of the flag ceremony.

In discussing the non-establishment clause, the majority cites Father Joaquin Bernas (Father Bernas), a Catholic priest:

> In effect, what non-establishment calls for is government neutrality in religious matters. Such government neutrality may be summarized in four general propositions: (1) Government must not prefer one religion over another religion or religion over irreligion because such preference would violate voluntarism and breed dissension; (2) Government funds must not be applied to religious purposes because this too would violate voluntarism and breed interfaith dissension; (3) Government action must not aid religion because this too can violate voluntarism and breed interfaith dissension; [and] (4) Government action must not result in excessive entanglement with religion because this too can violate voluntarism and breed interfaith dissension.[16]

The majority views the holding of daily Roman Catholic masses at the Quezon City Hall of Justice constitutionally permissible. They see no violation of the establishment clause because court personnel are not coerced to attend masses; no

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[13] *Ponencia,* pp. 12–13.

[14] 158 Phil. 60 (1974) [Per *J.* Zaldivar, *En Banc*]. Members of Iglesia ni Cristo are not allowed to affiliate with labor organizations.

[15] 292 Phil. 267 (1993) [Per *J.* Griño-Aquino, *En Banc*]. Members of Jehovah 's Witnesses believe that saluting the flag, singing the National Anthem, and reciting the patriotic pledge constitute acts of worship not due to the State.

[16] *Ponencia*, p. 15.

government funds are allegedly spent in the exercise of the religious ritual; the use of the basement for masses was not permanent; and other religions are allegedly not prejudiced.[17]

Thus, the majority disposes of this administrative matter in this wise:

WHEREFORE, the Court resolves to:

1. **NOTE** the letter-complaints of Mr. Valenciano, dated January 9, 2009, May 13, 2009, and March 23, 2010;
2. **NOTE** the 1st Indorsement dated September 21, 2010, by the Office on Halls of Justice, containing photocopies and certified photocopies of previous actions made relative to the complaint;
3. **NOTE** the Letter-Comment dated September 9, 2010, of Quezon City Regional Trial Court Executive Judge Fernando T. Sagun, Jr.;
4. **NOTE** the undated Letter-Comment of Quezon City Metropolitan Trial Court Executive Judge Caridad M. Walse-Lutero;
5. **DENY** the prayer of Tony Q. Valenciano to prohibit the holding of religious rituals in the QC Hall of Justice and in all halls of justice in the country; and
6. **DIRECT** the Executive Judges of Quezon City to **REGULATE** and **CLOSELY MONITOR** the holding of masses and other religious practices within the Quezon City Hall of Justice by ensuring, among others, that:
   (a) it does not disturb or interrupt court proceedings;
   (b) it does not adversely affect and interrupt the delivery of public service;
   (c) it does not unduly inconvenience the public.

In no case shall a particular part of a public building be a permanent place for worship for the benefit of any and all religious groups. There shall also be no permanent display of religious icons in all

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[17] *Id*. at 15–16.

Halls of Justice in the country. In case of religious rituals, religious icons and images may be displayed but their presentation is limited only during the celebration of such activities so as not to offend the sensibilities of members of other religious denominations or the non-religious public. After any religious affair, the icons and images shall be hidden or concealed from public view.

The disposition in this administrative matter shall apply to all halls of justice in the country. Other churches and religious denominations or sects are entitled to the same rights, privileges and practices in every hall of justice. In other buildings not owned or controlled by the Judiciary, the Executive Judges should coordinate and seek approval of the building owners/administrators accommodating their courts.[18]

IV

Allowing the exercise of religious rituals within government buildings violate both Section 5, Article III and Section 29(2), Article VI of the Constitution.

Section 5, Article III of the Constitution provides:

Section 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

This provision articulates two fundamental duties of the State. The first is to respect the free exercise of any religious faith. The second is not to establish, endorse, or favor any religion.

The parameters of the duty to respect the free exercise of any religion manifest in the context of a continuum. On the one hand, freedom to believe is absolute. On the other, physical manifestations of one's faith in the form of rituals will largely be tolerated except if they will tend to encroach or impede into the rights of others.[19]

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[18] *Id*. at 19–20.

[19] *Re: Request of Muslim Employees in the Different Courts in Iligan City (Re: Office Hours),* 514 Phil. 31, 38-39 (2005) [Per J. Callejo, Sr., *En*

Among those who profess adherence to the Roman Catholic Church, the Holy Eucharist is not simply a ritual, it is an important sacrament. More than a symbolism or the occasion to display icons, it requires the active, collective and public participation of its believers. It will require the presence of a priest and, while the ritual is ongoing, the prayers and incantations will be heard beyond the vicinity of its participants.

The offensiveness of this ritual cannot be obvious to those who belong to this dominant majority religion. It will not be obvious to those who will continuously enjoy the privilege of consistently hosting this in a government building charged with the impartial adjudication of the rule of law. The inability to see how this practice will not square with those who believe otherwise will especially be because religion is a matter of faith. The stronger one's faith is, the more tenacious the belief in the conception of one's god and the correctness of his or her fundamental teachings.

It will take great strides in both humility and sensitivity to understand that religious practices within government buildings are offensive to those who do not believe in any of the denominations or sects of Christianity. Those who do believe in a god but do not practice any ritual that worships their supernatural being or their deity will also find the allowance of the full Catholic sacrament of the Holy Eucharist demeaning.

Definitely, the sponsorship of these rituals within the halls of justice will not be acceptable to atheists, who fervently believe that there is no god; or to agnostics, who fundamentally believe that the existence of a supernatural and divine being cannot be the subject of either reason or blind faith.

As correctly underscored by the Chief Attorney, courts are not simply venues for the resolution of conflict. Our Halls of

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Banc]; *Estrada v. Escritor,* 455 Phil. 411, 537-538 (2003) [Per *J*. Puno, *En Banc*]; *Centeno v. Villalon-Pornillos,* G.R. No. 113092, September 1, 1994, 236 SCRA 197, 206-207 [Per *J*. Regalado, Second Division]; *German v. Barangan*, 220 Phil. 189, 202 (1985) [Per *J.* Escolin, *En Banc*]; *Gerona v. Secretary of Education,* 106 Phil. 2, 9-10 (1959) [Per *J.* Montemayor, *En Banc*].

Justice should symbolize our adherence to the majesty and impartiality of the rule of law. Unnecessary sponsorship of religious rituals undermines the primacy of secular law and its impartiality. It consists of physical manifestations of a specific kind of belief which can best be done in private churches and chapels, not in a government building. There is no urgency that it be done in halls of justice.

V

Justice Jardeleza is of the view that allowing the holding of religious rituals in our courts is an allowable accommodation under the freedom to worship clause. Accommodation, also termed "benevolent neutrality," was extensively discussed in *Estrada v. Escritor*.[20]

I disagree.

The precedent cited is inappropriate. It is also not a binding precedent.

Jurisprudence which provides for exceptions to State regulation is different from doctrinal support for endorsing a specific religion without a separate overarching compelling lawful and separate state interest.

Escritor involved an administrative complaint for immorality against Soledad Escritor, a court interpreter in the Regional Trial Court of Las Piñas, who cohabited and had a son with a married man. Invoking her religious freedom, *Escritor* argued that her conjugal arrangement conformed to the teachings of the Jehovah's Witnesses, the religious sect to which she belonged.

After a review of religion cases, the Court in *Escritor* formulated a two-part test in resolving cases involving freedom to worship. First, "the spirit, intent, and framework underlying the religion clauses in our Constitution"[21] is benevolent neutrality or accommodation. Government actions must neither burden nor facilitate "the exercise of a person's or institution's

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[20] 455 Phil. 411, 506 (2003) [Per *J.* Puno, *En Banc*].

[21] *Id.* at 137.

religion"[22] and that the State should "exempt, when possible, from generally governmental regulation individuals, whose religious beliefs and practices would otherwise thereby be infringed, or to create without state involvement an atmosphere in which voluntary religious exercise may flourish."[23] Second, there must be a compelling state interest should religious liberty be burdened.[24]

Escritor was ultimately absolved of the immorality charge against her, but only because the State failed to prove the compelling state interest in overriding her religious freedom. *Escritor* therefore involved a state policy that was apparently neutral and the question as to whether its consistent application given the ambient facts specific to a religion would violate the adherent's freedom to worship.

This is not the situation in this administrative matter. Here, we are asked to create a policy to sponsor religious rituals. There is no neutral state policy we are asked to interpret. We are asked to create a policy to enable a specific religion, and others similarly situated, to conduct their rituals within government space.

Escritor involved accommodation or exceptions to a state policy. In this administrative matter, we create a policy that benefits a group of religions that have rituals. It will not benefit believers who do not have public rituals or a deity. It certainly will not benefit all beliefs including those who profess to atheism or agnosticism.

Escritor therefore is not the proper precedent.

Since *Escritor*'s promulgation, benevolent neutrality has been constantly but erroneously quoted as a talisman to erase all legitimate constitutional objections to religious activity that impinges upon secular government policy. Yet, in the 2003

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[22] *Id*. at 148.

[23] *Id*. at 148–149.

[24] *Id*. at 137.

Decision, where the two-part test was formulated, only five Justices fully concurred with Justice Puno's *ponencia*.[25] Two other Justices wrote separate concurring opinions.[26] There were five other Justices who dissented, with Justice Carpio leading in the dissent.[27] That benevolent neutrality is even doctrine is, therefore, suspect.

More importantly, benevolent neutrality in reality may turn out to be an insidious means for those who believe in a majority decision to maintain their dominance in the guise of neutral tolerance of all religions.

Not all Buddhists have as active, collective, and public a ritual that requires a public space as Catholics. Agnostics do not practice any ritual. Opening space in our Halls of Justice for rituals such as the Holy Eucharist in effect provides further advantage to an already dominant religion. Since the number of Catholics in Quezon City far outnumbers any other denomination, the number of requests to make use of public spaces within the Halls of Justice will likely dwarf any other Christian denomination or religion. This is true in Quezon City. This is also true in most other Halls of Justice, including portions of the Supreme Court Compound. Catholic rituals dominate.

Benevolent neutrality in practice, thus, favors the already dominant.

VI

The proscription in Section 5, Article III of the Constitution against the State's establishment of a religion covers not only official government communication of its religious beliefs. It likewise generally prohibits support and endorsement of a religious organization or any of their activities or rituals.

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[25] The *ponencia* was concurred in by the Chief Justice Davide, Jr., and Associate Justices Austria-Martinez, Corona, Azcuna, and Tinga.

[26] Associate Justices Bellosillo and Vitug.

[27] Associate Justices Ynares-Santiago and Carpio wrote their separate dissenting opinions. Associate Justices Panganiban, Carpio-Morales, and Callejo, Sr. joined the dissenting opinion of Associate Justice Carpio.

The non-establishment clause can be appreciated in two basic ways. First, it can be a corollary to the Constitutional respect given to each individual's freedom of belief and freedom of exercise of one's religion. Second, it is also a restatement of the guarantee of equality of each citizen. That is, that no person shall be discriminated against on the basis of her or his creed or religious beliefs.

Congealed in this provision is the concept that the Constitution acknowledges the cultural power of the State. Government's resources, its reach, and ubiquity easily affect public consciousness. For example, actions of public officials are regular subjects of media in all its forms. The statements and actions of public officials easily pervade public deliberation. They also constitute frames for public debate on either personality or policy.

The rituals and symbolisms of government not only educate the public but also etch civic and constitutional values into mainstream culture. The flag for instance, reminds us of our colorful history. Flag ceremonies instill passionate loyalty to the republic and the values for which it stands. Halls of Justice consist of buildings to remind the public that their cases are given equal importance. The arrangement of bench and bar within our courtrooms exhibits the majesty of the law by allowing the judicial occupants to tower over the advocates to a cause. This arrangement instills the civic value that no one's cause will be above the law: that no matter one's creed or belief, all will be equal.

Any unnecessary endorsement, policy, or program that privileges, favors, endorses, or supports a religious practice or belief per se therefore would be constitutionally impermissible. It communicates a policy that contrary beliefs are not so privileged, not so favored, not so endorsed and unsupported by the Constitutional order. It implies that those whose creeds or whose faiths are different may not be as part of the political community as the other citizens who understand the rituals that are supported. It is to install discrimination against minority faiths or even against those who do not have any faith whatsoever.

There is no urgency in holding masses within the Halls of Justice. The Catholic Church owns many elegant places of worship. There are churches and chapels accessible to court personnel in the Quezon City Hall of Justice during their lunch hour. There are some, which are walking distance from their offices.

Allowing masses to be held within Halls of Justice therefore have no other purpose *except* to allow a sect, or religious denomination to express its beliefs. The primary purpose of the policy that is favored by the majority of this Court is not secular in nature, but religious. This is contrary to the existing canons of our Constitutional law.

Section 5, Article III does not allow the endorsement by the State of any religion. The only exception would be if such incidental endorsement of a religious exercise is in the context of a governmental act that satisfies the following three-part test: it has a "secular legislative purpose";[28] "its primary effect [is] that [which] neither advances nor inhibits religion";[29] and that it "must not foster 'an excessive entanglement with religion.'"[30]

In *Aglipay v. Ruiz*,[31] this Court allowed the issuance of postage stamps with a Philippine map and an indication that the City of Manila was the seat of the Roman Catholic Church's Eucharistic Congress in 1937. The Court held that "while the issuance and sale of the stamps in question may be said to be inseparably linked with an event of a religious character, the resulting propaganda, if any, received by the Roman Catholic

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[28] *Victoriano v. Elizalde Rope Workers' Union,* 158 Phil. 60, 83 (1974) [Per *J.* Zaldivar, *En Banc*] citing *Board of Education v. Allen,*392 U.S. 236, 20 L. ed. 2d, 1060, 88 S. Ct. 1923. See *Aglipay v. Ruiz,* 64 Phil. 201 (1937) [Per *J.* Laurel, *En Banc*].

[29] *Victoriano v. Elizalde Rope Workers' Union,* 158 Phil. 60, 83 (1974) [Per *J.* Zaldivar, *En Banc*] citing *Board of Education v. Allen,* 392 U.S. 236, 20 L. ed. 2d, 1060, 88 S. Ct. 1923.

[30] *Estrada v. Escritor*, 455 Phil. 411, 506 (2003) [Per *J.* Puno, *En Banc*] citing *Lemon v. Kurtzman*, 403 U.S. 602, 613 (1971).

[31] 64 Phil. 201 (1937) [Per *J.* Laurel, First Division].

Church, was not the aim and purpose of the Government."[32] In *Aglipay,* the legitimate public purpose was to boost the country's tourism, not to celebrate religion. The Court found that the principal purpose was secular. The religious benefit was also considered to be incidental.

There is no duration, degree of convenience, or extent of following that justifies any express or implied endorsement of any religious message or practice. There is also no type of endorsement allowed by the provision. It is sufficient that the State, through its agents, favors expressly or impliedly a religious practice.

The majority opinion cites Father Bernas in discussing the non-establishment clause. Unfortunately, Father Bernas, even as a celebrated author in Constitutional law, is not the Supreme Court. Neither are his statements precedents for purposes of this Court. He is also a Catholic priest and therefore his opinions on the impact of law on religion should be taken with a lot of advisement.

Furthermore, directing our Executive Judges to regulate and closely monitor the holding of masses and other religious practices within our courts promotes excessive entanglements[33] between courts and various religions. This close monitoring will result in an unnecessary interaction between the church and the State. It will take time from our Executive Judges, who, instead of monitoring the holding of religious rituals, could otherwise be performing their secular functions such as reducing court dockets. They will be asked to arbitrate between religions.

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[32] *Id*. at 209.

[33] *Estrada v. Escritor*, 455 Phil. 411, 506 (2003) [Per *J*. Puno, *En Banc*].
In this case, this Court mentions the concept of "excessive entanglement" which appears in *Lemon v. Kurtzman*, 403 U.S. 602, 613 (1971). In *Lemon v. Kurtzman,* it was noted that the way to determine whether government entanglement with religion is excessive is by "[examining] the character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and the religious authority."

VII

Justices De Castro[34] and Jardeleza[35] take a contrary view. For them, allowing our employees to hold religious rituals in our Halls of Justice serves "a human resource purpose"[36] in that "it renews in [our employees] daily their desire to achieve the highest principles of morality [which] can only better equip them to meet their secular obligation to be at all times accountable to the people."[37]

Unfortunately, this is a rationalization which benefits only those who are of the same faith for which the rituals will be conducted. It does not apply to those who do not share in the same beliefs. The non-establishment clause does not protect those that believe in the religion that is favored, privileged, endorsed, or supported. It is supposed to protect those that may be in the minority. The alleged secular purpose of the Holy Mass therefore only benefits Catholics. It does not apply to a Buddhist, a Taoist, an atheist, or an agnostic.

Any moralizing effect of religion notwithstanding, religion should correctly remain to be "a private matter for the individual, the family, and the institutions of private choice."[38] As Justice Jardeleza points out, setting and context determine whether the use of a religious symbol effectively endorses a religious belief.[39] There is no violation of the establishment clause if we allow an employee to privately pray the rosary within the confines of his or her workspace.[40]

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[34] Justice de Castro's Concurring Opinion, p. 15, where Justice de Castro stated that "[i]s religion without any redeeming value or beneficial effect insofar as public service is concerned?"

[35] Justice Jardeleza's Reflections, p. 19.

[36] *Id.* at 20.

[37] *Id.* at 19.

[38] *Lemon v. Kurtzman,* 402 US 613, 625 (1971).

[39] Justice Jardeleza's Reflections, p. 12, citing *County of Allegheny v. ACLU*, 492 U.S. 573 (1989).

[40] Justice de Castro's Concurring Opinion, p. 15.

The case is different, however, if the religious ritual is collectively and publicly performed. Our Halls of Justice were not built for religious purposes. Allowing the performance of religious rituals in our Halls of Justice runs roughshod over the rights of non-believing employees and other litigants who, for non-religious purposes, are present in the courthouse but are involuntarily exposed to the religious practice.

Moreover, the purpose and goal of our secular laws and service to our people should be enough motivation for all public officers to do their best in their jobs. To provide the public space for a supposedly private matter like religion, in the name of morality, is not what the Constitution concedes.

If rituals for any religion serve any human resource incentive, so should any form of non-belief, be it in the form of atheism or agnosticism. It does not make sense for a state to favor any religious ritual yet at the same time accommodate citizens, who fervently believe that rituals should never be done.

VIII

More specific to the prohibition against the establishment of a religion are the provisions in the second paragraph of Section 29, Article VI of the Constitution:

> Section 29.
>
> . . . . . .
>
> (2) No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium. (Emphasis supplied)

The Constitution specifically prohibits public property from being "employed for the benefit or support of any sect, church, denomination, sectarian institution or system of religion."

This provision allows for no qualification. Allowing Catholic masses to be celebrated daily within the Halls of Justice definitely employs public property for the "benefit or support" of the Catholic religion. Catholicism is a "church," "denomination," and a "system of religion."

The majority believes that Section 29(2), Article VI of the Constitution "contemplates a scenario where the appropriation is primarily intended for the furtherance of a particular church."[41] In interpreting the provision, the majority deploys the statutory interpretative device labelled as *noscitur a sociis* – the doctrine of associated words – and examined the definitions of "appropriate" and "apply" mentioned before "use" and "employ" in the provision. Based on the definitions in Black's Law Dictionary, "appropriate" and "apply" are similarly done for a particular purpose.[42] The *ponencia* then concluded that "use" and "employ," associated with "appropriate" and "apply," must similarly be done for a particular purpose, specifically, to benefit a particular religion.[43]

I do not agree with this interpretation. It implies that the religious use or employment of public property is allowable so long as other religious groups may use or employ the property.

Section 29(2), Article VI of the Constitution is straightforward and needs no statutory construction. The religious use of public property is proscribed in its totality. This proscription applies to *any* religion. This is especially so if the accommodation for the use of public property is principally, primarily, and exclusively only for a religious purpose.

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[41] *Id.* at 16.

[42] *Id.* The *ponencia* states:

> The word "apply" means "to use or employ for a particular purpose." "Appropriate" means "to prescribe a particular use for particular moneys or to designate or destine a fund or property for a distinct use, or for the payment of a particular demand."

[43] *Id.*

This holistic interpretation of the Constitution is more sensitive to those who disbelieve – the agonistics and the atheists – who are equally protected under the Constitution. It is also more sensitive to the concept that the state remains neutral in matters pertaining to faith: that no institutional religion, due to their dominance or resources, may have any form of advantage over another act of religious belief.

IX

The other cases cited by the majority do not involve the non-establishment clause. Rather, the cases involve exceptions to a secular policy.

Victoriano v. Elizalde Rope Workers Union[44] challenged the applicability of the closed shop provisions to Members of Iglesia ni Cristo. The closed shop provisions were meant to further the State's protection to labor through collective negotiations. The petitioner in that case alleged that the means through which the purpose was to be achieved interferes with the exercise of his religion. That case did not involve allowance for any religious ritual within public property for the convenience of its adherents.

Ebralinag v. Division Superintendent of Schools of Cebu[45] examined the plea of a group of students who adhered to the tenets of the Jehovah's Witnesses to be exempted from certain gestures during the flag ceremony. Like *Escritor* and *Victoriano*, Ebralinag pursued a secular governmental interest. Religion, thus, only becomes significant as a basis to seek exemption to its application.

Allowing religious rituals within the Halls of Justice is not supported by these cases. Allowing the celebration of Roman Catholic masses within court premises definitely is not occasioned by a need to relieve their faithful from any burdensome effect. This case involves the State, through its employees, allowing the practice of religious rituals with *no other purpose except*

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[44] 158 Phil. 60 (1974) [Per *J.* Zaldivar, *En Banc*].

[45] 292 Phil. 267 (1993) [Per *J.* Griño-Aquino, *En Banc*].

to practice religious rituals in a public space. This cannot be done.

X

The Constitution guarantees liberty for those who choose to believe in a god. It does not, however, sanction insensibilities towards those who believe otherwise. The Constitution is also a guarantee that those who profess a dominant religion do not, in fact and in reality, further dominate our government spaces with their rituals or messages.

The non-establishment clause is the normative protection that ensures and mandates tolerance. It is meant to sharpen the sensitivity of those who are powerful so that they understand the point of view of others who have different beliefs. It is a sovereign command that those who hold important public offices – such as judges and justices – be conscious that their fervent personal and religious beliefs should not be mirrored in the doctrines and results of their cases.

Projecting the verses of Catholic prayers in a public building, using powerful sound systems to proclaim one's faith, selecting a space in the center of a Hall of Justice where the rituals resonate will not be obviously offensive to Catholics in the majority. However, it is utter callousness to say that it will offend no one. It causes discomfort to all those who will pass and do not share or have objections to the teachings broadcast in the Holy Eucharist. It offends those who believe that the State should endeavor to be neutral and impartial and avoid situations where this will be compromised.

Certainly, there is no urgent and compelling need to allow a certain sect to exercise their rituals within the Halls of Justice on a regular basis. There are churches, chapels, mosques, synagogues, and private spaces available for worship.

"Benevolent neutrality" to render state regulation impotent in a situation where a religion dominates becomes a painful illusion to those at the margins of our society. For this Court to adopt this façade is to reward the dominant. It is to maintain

the status quo and reify the hegemony of those who have power. This will not be lost to those that pass our Halls of Justice.

To reward the dominant would be to further ensure divisiveness, distrust, and intolerance. It will ultimately result in the accommodation of fundamentalist views embedded in popular religions. The marginalized will perceive no succor in the system. They will see no opening and no space for their own freedoms. Religious rituals in our Halls of Justice, no matter the justification, breed contempt for the impartiality of the Rule of Law.

The faiths which anchor our Constitution are diverse. It should not be the monopoly of any sect. The diversity mandated by our Constitution deepens our potentials as sovereigns. To favor a belief system in a divine being therefore, in any shape, form, or manner, is to undermine the very foundations of our legal order.

The Constitution does mention god. It may be that the divine is the the Judeo-Christian God. It may be that it is Allah of Islam or Yahweh of the Jews. The god may not be theistic and may simply be the Dharma of the Buddhists. It may also not be a divinity but reasoned secularism as advocated by the most militant Atheists.

It may also be a god that is so secure in itself that it does not require any kind of religious rituals, just the humility of not imposing one's belief on others.

Except for our own individual consciences, we are not competent to make these religious judgments as Supreme Court Justices. Certainly, it is not within our constitutional mandate to favor one over the other in any manner.

There is no reason for the Holy Eucharist to be celebrated in our Halls of Justice. Catholic churches are ubiquitous. Should the faithful among our judges and employees find the need to worship, I am of the belief that they should practice the compassion for others and the virtue for humble sacrifice taught by no less than Jesus Christ himself. Thus, they should muster

the patience to walk to the closest church and there to fervently pray for more humility and a socially just and tolerant society.

The same doctrine applies for all other religions.

ACCORDINGLY, I vote to **NOTE** the letter-complaints of Mr. Valenciano, dated January 9, 2009, May 13, 2009, and March 23, 2010 and **GRANT** his request to disallow the holding of daily Roman Catholic masses, or any other religious ritual, at the basement of the Quezon City Hall of Justice.

EN BANC

[A.M. No. RTJ-10-2219. March 7, 2017]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **Retired Judge PABLO R. CHAVEZ, Former Presiding Judge, Regional Trial Court, Branch 87, Rosario, Batangas, Atty. TEOFILO A. DIMACULANGAN, JR., Clerk of Court VI, Mr. ARMANDO ERMELITO M. MARQUEZ, Court Interpreter III, Ms. EDITHA E. BAGSIC, Court Interpreter III, and Mr. DAVID CAGUIMBAL, Process Server, all of Regional Trial Court, Branch 87, Rosario, Batangas,** *respondents.*

[A.M. No. 12-7-130-RTC. March 7, 2017]

Re: Undated Anonymous Letter-Complaint Against the Presiding Judge, Clerk of Court and Court Stenographer of the Regional Trial Court, Branch 87, Rosario, Batangas.

SYLLABUS

1. **LEGAL ETHICS; JUDGES; INEXCUSABLE FAILURE TO DECIDE CASES WITHIN THE REGLEMENTARY PERIOD CONSTITUTES GROSS INEFFICIENCY, WARRANTING THE IMPOSITION OF AN ADMINISTRATIVE SANCTION ON THE DEFAULTING JUDGE.—** On delay in rendering judgement, Section 15(1) and (2), Article VIII of the Constitution provides that all cases and matters must be decided or resolved by the lower courts within three months from the date of submission of the last pleading. Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary mandates judges to "perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness." Also, Rule 3.05, Canon 3 of the Code of Judicial Conduct exhorts judges to dispose of the court's business promptly and to decide cases within the required periods. Judge Chavez' unexplained and unreasonable delay in deciding cases and resolving incidents and motions, and his failure to decide the remaining cases before his compulsory retirement constitute gross inefficiency which cannot be tolerated. Inexcusable failure to decide cases within the reglementary period constitutes gross inefficiency, warranting the imposition of an administrative sanction on the defaulting judge.

2. **ID.; ID.; ID.; UNDUE DELAY IN RENDERING A DECISION OR ORDER IS CLASSIFIED AS A LESS SERIOUS CHARGE PUNISHABLE BY SUSPENSION FROM OFFICE.—** Judge Chavez' excuses are not sufficient to absolve him of disciplinary action. Judges and clerks of court should personally conduct a physical inventory of the pending cases in their courts and personally examine the records of each case at the time of their assumption to office, and every semester thereafter. Judges should know which cases are submitted for decision and are expected to keep their own record of cases so that they may act on them promptly. We thus find him guilty of undue delay in rendering a decision. Undue delay in rendering a decision or order is classified as a less serious charge under Section 9, Rule 140 of the Rules of Court. It is punishable by (1) suspension from office without salary and other benefits for not less than 1 month nor more than 3 months, or (2) a fine of more than ₱10,000 but not exceeding ₱20,000.

3. ID.; ID.; CODE OF JUDICIAL CONDUCT; JUDGES MUST ADOPT A SYSTEM OF RECORD MANAGEMENT AND ORGANIZE THEIR DOCKETS TO BOLSTER THE PROMPT AND EFFICIENT DISPATCH OF BUSINESS, AND SHOULD ORGANIZE AND SUPERVISE COURT PERSONNEL TO ENSURE THE PROMPT AND EFFICIENT DISPATCH OF BUSINESS, AS WELL AS THE OBSERVANCE OF HIGH STANDARDS OF PUBLIC SERVICE AND FIDELITY AT ALL TIMES.— Judges are charged with exercising extra care in ensuring that the records of the cases and official documents in their custody are intact. They must adopt a system of record management and organize their dockets to bolster the prompt and efficient dispatch of business. Further, as administrative officers of the court, judges should organize and supervise court personnel to ensure the prompt and efficient dispatch of business, as well as the observance of high standards of public service and fidelity at all times.

4. ID.; ID.; ID.; GROSS NEGLECT OF DUTY, DEFINED; IN CASES INVOLVING PUBLIC OFFICIALS, THERE IS GROSS NEGLIGENCE WHEN A BREACH OF DUTY IS FLAGRANT AND PALPABLE.— Acting on the findings of the judicial audit team, we hold that Judge Chavez is liable for gross neglect of duty. Gross neglect of duty refers to negligence that is characterized by a glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally; or by acting with a conscious indifference to consequences with respect to other persons who may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to take on their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable. In this case, the totality of the findings of the judicial audit team proves Judge Chavez' reckless and irresponsible attitude towards his duties. He utterly and glaringly lacked the necessary care and organization in handling and managing his court and personnel. He was completely remiss in his duties to ensure that there is order and inefficiency in his court, to maintain a well-organized system of record-keeping and docket management, and to supervise his personnel and make sure

that they are aware of and comply with the exacting standards imposed on all public servants.

5. ID.; ID.; ID.; JUDGES SHOULD NOT MERELY RELY ON THEIR COURT STAFF FOR THE PROPER MANAGEMENT OF THE COURT'S BUSINESS, AND THEY COULD NOT HIDE BEHIND THE INEFFICIENCY OR THE INCOMPETENCE OF ANY OF THEIR SUBORDINATES.— Judge Chavez himself admits that he has been overly lenient and lax and that, as Presiding Judge for 11 years, "he overly relied on the representations of his [c]ourt staff, particularly his Clerk of Court that the case records and disposition of cases are proper and in order." He laments that he is a victim of his court staff's betrayal and perfidy. Unfortunately for Judge Chavez, his defense does not exonerate him from the penalties under the law. Judges cannot be excused by the acts of their subordinates because court employees are not the guardians of a judge's responsibility. Judges should not merely rely on their court staff for the proper management of the court's business. Being in legal contemplation the head of his branch, he was the master of his own domain who should be ready and willing to take the responsibility for the mistakes of his subjects, as well as to be ultimately responsible for order and efficiency in his court. He could not hide behind the inefficiency or the incompetence of any of his subordinates.

6. ID.; ID.; GROSS NEGLECT OF DUTY AND UNDUE DELAY IN RENDERING DECISION; RESPONDENT-JUDGE FOUND GUILTY THEREOF; PROPER PENALTY.— Gross neglect of duty is a grave offense punishable by dismissal. The penalty of dismissal carries with it "cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking civil service examinations." Section 17, Rule XIV of the Civil Service Commission Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws provides that when the respondent is guilty of two or more charges, the penalty for the most serious charge should be imposed and the other charges may be considered as aggravating circumstances. In this case, Judge Chavez is guilty of the grave offense of gross neglect of duty, and the less serious charge of undue delay in rendering decisions. Since Judge Chavez is already retired, the

Court imposes a penalty of forfeiture of Judge Chavez' retirement benefits.

7. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERKS OF COURT; MUST SHOW COMPETENCE, HONESTY AND PROBITY SINCE THEY ARE CHARGED WITH SAFEGUARDING THE INTEGRITY OF THE COURT AND ITS PROCEEDINGS.— We stress that clerks of court are the chief administrative officers of their respective courts. Their administrative functions are vital to the prompt and proper administration of justice, to wit: They must show competence, honesty and probity since they are charged with safeguarding the integrity of the court and its proceedings x x x. x x x. They are charged with the efficient recording, filing and management of court records, besides having administrative supervision over court personnel. They play a key role in the complement of the court and cannot be permitted to slacken on their jobs under one pretext or another. They must be assiduous in performing their official duties and in supervising and managing court dockets and records.

8. ID.; ID.; ID.; ID.; THE PRE-MARKING OF EXHIBITS WITHOUT THE PRESENCE OF THE PROSECUTOR IS HIGHLY IRREGULAR, AS THE RULES REQUIRE THE PRESENCE OF BOTH PARTIES TO THE CASE.— Regarding the pre-marking of exhibits without the presence of the prosecutor in *Singson v. Singson* for annulment of marriage, respondent Dimaculangan alleged that he obtained the consent of the prosecutor. There was, however, no evidence proving this claim. As branch clerk of court, respondent Dimaculangan is the administrative assistant of the presiding judge. The presiding judge may, before the start of the pre-trial conference, refer the case to the branch clerk of court for a preliminary conference to assist the parties in reaching a settlement, to mark documents or exhibits to be presented by the parties and copies thereof to be attached to the records after comparison and to consider such other matters as may aid in the prompt disposition of the case. The rules require the presence of *both* parties to the case. Thus, it was highly irregular for respondent Dimaculangan to conduct the pre-marking in the prosecutor's absence.

9. ID.; ID.; ID.; ID.; OCA CIRCULAR NO. 156-2006; AUTHORITY OF THE CLERKS OF COURT OF THE REGIONAL TRIAL COURTS TO NOTARIZE DOCUMENTS, REQUIREMENTS; NOT COMPLIED WITH.— As to respondent Dimaculangan's act of notarizing the *ex parte* motion for leave of court to serve summons by publication in SP No. 04-078, he asserts that it was an exercise of his official functions as an *ex-officio* notary public. OCA Circular No. 156-2006 authorized clerks of court of the RTCs to notarize documents subject to the following conditions: (i) all notarial fees charged in accordance with Section 7(o) of Rule 141 of the Rules of Court, and, with respect to private documents, in accordance with the notarial fee that the Supreme Court may prescribe in compliance with Section 1, Rule V of the 2004 Rules on Notarial Practice, shall be for the account of the Judiciary; and (ii) they certify in the notarized documents that there are no notaries public within the territorial jurisdiction of the Regional Trial Court[.] There was no evidence that respondent Dimaculangan complied with these requirements.

10. ID.; ID.; ID.; ID.; THE CLERKS OF COURTS, AS CUSTODIANS OF THE COURTS' FUNDS AND REVENUES, RECORDS, PROPERTIES, AND PREMISES, ARE LIABLE FOR ANY LOSS, SHORTAGE, DESTRUCTION OR IMPAIRMENT OF THOSE ENTRUSTED TO THEM, AND ANY SHORTAGES IN THE AMOUNTS TO BE REMITTED AND THE DELAY IN THE ACTUAL REMITTANCE CONSTITUTE GROSS NEGLECT OF DUTY.— SC Administrative Circular No. 3-2000 dated June 15, 2000 requires that the collections for the Judiciary Development Fund (JDF) be deposited daily with the nearest Land Bank branch through a designated account number. If a daily deposit is not possible, it should be made at the end of every month, provided that if the JDF collection reaches ₱500, the money shall be deposited immediately. These guidelines emphasize the importance and seriousness of the duty imposed upon clerks of courts who manage and secure the funds of the Court. Mere delay in remitting the funds collected has, in fact, been considered gross neglect of duty or grave misconduct. Clerks of court are the custodians of the courts' funds and revenues, records, properties, and premises. They are liable for any loss, shortage, destruction or impairment of those

entrusted to them. Any shortages in the amounts to be remitted and the delay in the actual remittance constitute gross neglect of duty for which the clerk of court shall be held administratively liable. The OCA's findings show that respondent Dimaculangan incurred a cash shortage of ₱18,000 in the Fiduciary Fund and failed to deposit the court's collections as required under SC Administrative Circular No. 3-2000. Thus, we find that respondent Dimaculangan has been remiss in his duty to promptly remit cash collections and account for the shortages of court funds under his care.

11. ID.; ID.; ID.; ID.; TAKING ADVANTAGE OF ONE'S POSITION TO CIRCUMVENT AND DISREGARD THE RULES CONSTITUTES GRAVE MISCONDUCT; PENALTY OF DISMISSAL IMPOSED FOR GROSS NEGLECT OF DUTY AND GRAVE MISCONDUCT.— Given respondent Dimaculangan's numerous and grave infractions, we find that he was not only remiss in his duties; he took advantage of his position as clerk of court to circumvent and disregard the rules. His acts do not only point to gross neglect of duty but also grave misconduct. Misconduct is grave if corruption, clear intent to violate the law or flagrant disregard of an established rule is present; otherwise, the misconduct is only simple. In this case, the facts show that respondent Dimaculangan disregarded established rules of the Court. Gross neglect of duty and grave misconduct incur the penalty of dismissal. As respondent Dimaculangan has already resigned, all the benefits to which he may have been entitled, except earned leave credits, are forfeited. He is also disqualified from holding public office in the future, including in government-owned and controlled corporations.

12. ID.; ID.; ID.; PROCESS SERVER; DUTIES.— We have said that the duty of a process server is vital to the administration of justice. A process server's primary duty is to serve court notices which precisely requires utmost care on his part to ensure that all notices assigned to him are duly served on the parties. It is through the process server that defendants learn of the action brought against them by the complainant. Significantly, it is also through the service of summons by the process server that the trial court acquires jurisdiction over the defendant. It is therefore important that summonses, other writs and court processes be served expeditiously.

13. ID.; ID.; ID.; ID.; SIGNING THE PROCESS SERVER RETURNS WITHOUT ACTUALLY SERVING ANY SUMMONS OR COURT PROCESS CONSTITUTES GRAVE MISCONDUCT AND SERIOUS DISHONESTY WHICH ARE PUNISHABLE BY DISMISSAL EVEN FOR THE FIRST OFFENSE.— Respondent Caguimbal committed grave misconduct and serious dishonesty when he signed process server returns without actually serving any such summons or court process. Misconduct is an unacceptable behavior that transgresses the established rules of conduct for public officers. To be considered as grave and to warrant dismissal from the service, the misconduct must be serious, important, weighty, momentous and not trifling. It must imply wrongful intention and not a mere error of judgment and it must have a direct relation to, and be connected with, the performance of his official duties amounting either to maladministration, willful, intentional neglect or failure to discharge the duties of the office. On the other hand, dishonesty is the disposition to lie, cheat, deceive, or defraud; unworthiness; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. Here, there is evidence to show that respondent Caguimbal intentionally neglected the discharge of his duty and, as a consequence, deceived both the court and the litigants. Assuming that he was merely instructed by his superior to falsify the return, he knew or ought to have known that such instruction is illegal. Respondent Caguimbal should not have tolerated such illegal act. Instead, he should have taken measures to stop it. Both grave misconduct and dishonesty are grave offenses which are punishable by dismissal even for the first offense. Considering respondent Caguimbal's retirement from service in 2013, all the benefits to which he may have been entitled, except earned leave credits, will be forfeited.

14. ID.; ID.; ID.; STENOGRAPHERS; DUTIES; FAILURE TO TRANSCRIBE THE STENOGRAPHIC NOTES AND ATTACH THE TRANSCRIPTS TO THE PROPER CASE RECORDS CONSTITUTE SIMPLE NEGLECT OF DUTY; PENALTY OF FINE, IMPOSED.— Stenographers should comply faithfully with paragraph 1, Section 17, Rule 136, of the Rules of Court x x x. Further, SC Administrative Circular No. 24-90 requires all stenographers to transcribe all stenographic notes and attach the transcripts to the record of

the case not later than 20 days from the time the notes were taken. Stenographers shall also accomplish a verified monthly certification to monitor their compliance with this directive. The stenographer's salary shall be withheld in case of failure or refusal to submit the required certification. Respondent Bagsic explained that it is their practice to keep TSNs in their cabinets. If there were stenographic notes that were not transcribed, she claims that this was due to lack of time. These excuses, however, are not acceptable. Clearly, respondent Bagsic was remiss in her duties as stenographer and should be held liable for simple neglect of duty. Simple neglect of duty is the failure to give attention to a task, or the disregard of a duty due to carelessness or indifference. Under Rule 10, Section 46(D)(1) of the Revised Rules on Administrative Cases in the Civil Service, simple neglect of duty, classified as a less grave offense, is punishable by suspension of 1 month and 1 day to 6 months for the first offense. Under Section 19, Rule XIV of the Civil Service Commission Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, a fine may be imposed in the alternative. Since respondent Bagsic resigned from the RTC in December 2009, we find the penalty of a fine in the amount of ₱5,000 reasonable in line with the Court's rulings in similar cases.

15. ID.; ID.; ID.; COURT INTERPRETER; DUTIES; FAILURE TO PREPARE AND SIGN THE MINUTES OF THE COURT PROCEEDINGS CONSTITUTES SIMPLE NEGLECT OF DUTY.— As court interpreter, respondent Marquez is duty-bound to prepare and sign the minutes of court sessions. In *Reyes v. Pabilane*, we discussed the importance of the minutes: [F]or it gives a brief summary of the events that take place thereat including a statement of the date and time of the session; the name of the judge, clerk of court, court stenographer, and court interpreter who are present; the names of the counsel for the parties who appear; the parties presenting evidence; the names of the witnesses who testified; the documentary evidence marked; and the date of the next hearing. Respondent Marquez' failure to prepare and sign the minutes of the court proceedings constitutes simple neglect of duty.

16. ID.; ID.; ID.; CODE OF CONDUCT FOR COURT PERSONNEL; ALL COURT PERSONNEL ARE ENJOINED FROM RECOMMENDING PRIVATE ATTORNEYS TO

LITIGANTS, PROSPECTIVE LITIGANTS OR ANYONE DEALING WITH THE JUDICIARY, FOR THEY MUST MAINTAIN A NEUTRAL ATTITUDE IN DEALING WITH PARTY-LITIGANTS, AND THEY HAVE NO BUSINESS GETTING PERSONALLY INVOLVED IN MATTERS DIRECTLY EMANATING FROM COURT PROCEEDINGS, UNLESS EXPRESSLY SO PROVIDED BY LAW.— Respondent Marquez also denies that he acted as an agent for Atty. Jose Calingasan when he referred said counsel to Ms. Rene Frane Arillano for possible lawyer-client relationship. He claims that he merely provided the names of counsels within the vicinity of the Hall of Justice. Section 5, Canon IV of the Code of Conduct for Court Personnel enjoins all court personnel from recommending private attorneys to litigants, prospective litigants or anyone dealing with the judiciary. As an employee of the judiciary, respondent Marquez must maintain a neutral attitude in dealing with party-litigants. All court personnel should be reminded that they have no business getting personally involved in matters directly emanating from court proceedings, unless expressly so provided by law. Since the image of the courts of justice is reflected in the conduct, official or otherwise, of even its minor employees, it is the imperative duty of everyone involved in the dispensation of justice to maintain the courts' integrity and standing as true temples of justice and avoid any impression or impropriety, misdeed or negligence. While court employees are not totally prohibited from rendering aid to others, they should see to it that the assistance, albeit involving acts unrelated to their official functions, does not in any way compromise the public's trust in the justice system.

17. **ID.; ID.; ID.; ID.; REFERRING A PROSPECTIVE LITIGANT TO A PRIVATE LAWYER CONSTITUTES SIMPLE MISCONDUCT, AS SAID ACT GAVE THE IMPRESSION THAT THE COURT IS INDORSING A PARTICULAR LAWYER, THEREBY UNDERMINING THE PUBLIC'S FAITH IN THE IMPARTIALITY OF THE COURTS.—** [R]espondent Marquez transgressed the strict norm of conduct required from court employees by referring a prospective litigant to a private lawyer. His act gave the impression that the court is indorsing a particular lawyer, thereby undermining the public's faith in the impartiality of the courts. We thus hold that respondent

Marquez is guilty of simple misconduct. Simple misconduct has been defined as an unacceptable behavior which transgresses the established rules of conduct for public officers, work-related or not. Consistent with the rulings involving simple neglect of duty and simple misconduct committed by court employees, we impose the fine of ₱5,000 on respondent Marquez.

18. ID.; ID.; ID.; EVERY EMPLOYEE OF THE JUDICIARY SHOULD BE AN EXAMPLE OF INTEGRITY, UPRIGHTNESS, AND HONESTY.— In *Leave Division, Office of Administrative Services, Office of the Court Administrator v. De Lemos*, we reminded court employees: [A]ll court employees must exercise at all times a high degree of professionalism and responsibility, as service in the Judiciary is not only a duty but also a mission. The Court has repeatedly emphasized that everyone in the judiciary, from the presiding judge to the clerk, must always be beyond reproach, free of any suspicion that may taint the judiciary. Public service requires utmost integrity and discipline. A public servant must exhibit at all times the highest sense of honesty and integrity, for no less than the Constitution mandates the principle that "a public office is a public trust and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency." As the administration of justice is a sacred task, the persons involved in it ought to live up to the strictest standards of honesty and integrity. Their conduct, at all times, must not only be characterized by propriety and decorum, but must also be above suspicion. Thus, every employee of the judiciary should be an example of integrity, uprightness, and honesty.

D E C I S I O N

***PER CURIAM*:**

This administrative matter arose from the judicial audit conducted in the Regional Trial Court (RTC), Branch 87, Rosario, Batangas on March 2 to 4, 2009 in view of the then pending compulsory retirement of Judge Pablo R. Chavez (Judge Chavez) on August 17, 2009 and pursuant to Travel Order No. 09-A-2009.

I

Respondent Judge Chavez previously presided over Branch 87 of the RTC of Rosario, Batangas. In a Memorandum[1] dated October 30, 2009, the judicial audit team reported that as of audit date, Branch 87 had a total caseload of 602 active cases consisting of 409 criminal cases and 193 civil cases. The report was based on the records actually presented to and examined by the team which are classified according to the status/stages of the proceedings:

STATUS/STAGES OF PROCEEDINGS	**CRIMINAL**	**CIVIL**	**TOTAL**
Warrants/Summons	18	1	19
Arraignment	23	0	23
Preliminary Conference, Pre-Trial, Mediation	22	24	46
Trial	278	87	365
For Compliance	4	13	17
No action Taken	0	2	2
No Further Action/Setting	21	21	42
Submitted for Resolution	11	10	21
Submitted for Decision	27	24	51
Suspended proceedings	4	7	11
Newly Filed	1	4	5
TOTAL	**409**	**193**	**602**[2]

The audit team highlighted the items in the court's caseload and identified the case number, parties, nature of the case and latest court action. There were 17 criminal cases without further action or setting for a considerable length of time, four criminal cases where the accused had not been arraigned despite the lapse of a considerable length of time from the date the cases were filed, 11 criminal cases with pending incidents submitted

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[1] *Rollo* (A.M. No. RTJ-10-2219), pp. 1-60.

[2] *Id.* at 1.

for resolution and 27 criminal cases submitted for decision.[3] Meanwhile, there were two civil cases where the court failed to take action from the time of their filing, 21 civil cases without further action or setting for a considerable length of time, 10 civil cases with unresolved motion or incident submitted for resolution and 24 civil cases submitted for decision.[4]

The following are the audit team's general adverse findings: (1) case records are not well kept as they are not chronologically arranged and not paginated; there were typographical errors in several issued orders; (2) legal fees form are not attached to the records and the amounts of legal fees allegedly paid are merely enumerated on the pleadings while there were cases without even the breakdown of the fees paid; (3) there was no information as to whether the amount of sheriff's fees for the service of summons were cash advanced or subject to reimbursement as there were no documents available to support them; (4) the civil and criminal docket books were not updated and the civil docket book contained erasures as to the status of cases for nullity of marriage; (5) the court's semestral docket inventory for June to December 2008 was not accurate; (6) records in some criminal cases had no certificates of arraignment; (7) a cash count disclosed that the court had in its possession the amount of ₱29,240 as of March 4, 2009; (8) during the audit, a certain Ms. Rene Frane Arillano from Biga, Labo, Batangas, approached the team inquiring about correction of entry in the birth certificate as her name was misspelled and that her gender was typed "male" instead of "female." Asked why she was waiting outside, she said that she was waiting for Mr. Armando Ermelito M. Marquez (Marquez)[5] who prepared for her the necessary documents needed for their filing. Asked to comment, Mr. Marquez stated that he merely referred Ms. Arillano to Atty. Jose Calingasan; (9) archiving of cases was resorted to even if the inaction was attributable to the non-

[3] *Id.* at 2-6.

[4] *Id.* at 6-11.

[5] Also referred to as Mr. Ernie Marquez in some parts of the records.

compliance of government officers, bureaus and agencies to the directives of the court and the court's failure to set the cases for hearing; and (10) the court staff does not observe the mandatory flag ceremonies under Republic Act No. 8491[6] and reiterated in Supreme Court (SC) Circular No. 37-98[7] dated June 22, 1998 and SC Circular No. 62-2001[8] dated September 27, 2001.[9]

On the court's active cases, Judge Chavez was found to have failed to: (1) take any action on Civil Cases Nos. LRC 09-006, CC 09-013 from the time of their filing; (2) take further action on identified criminal and civil cases; (3) resolve the pending incidents and motions submitted for resolution on identified criminal and civil cases; (4) decide identified criminal and civil cases which were submitted for decision as early as 2007 and 2008; (5) resolve on time identified criminal cases; and (6) present to the audit team the records of a criminal case. He was also reported to have irregularly issued an order of inhibition dated August 28, 2008 after the case had been submitted for decision on September 12, 2007. The audit team noted that except for three cases, in all the cases it identified, Judge Chavez failed to seek an extension to resolve or decide them. Even in the three cases where Judge Chavez sought an extension, he still incurred delay in deciding them.[10]

The audit team further observed the following in the sampling of 85 decided and 27 archived annulment of marriage cases for the period 2004 to 2008: (1) the mandatory requirements to effect a valid substituted service of summons pursuant to *Manotoc v. Court of Appeals*[11] were not strictly observed. Most of the summons issued and served by Process Server David Caguimbal

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[6] Flag and Heraldic Code of the Philippines (1998).

[7] Implementation of Republic Act No. 8491.

[8] Conduct of Flag Raising and Flag Lowering Ceremony.

[9] *Rollo* (A.M. No. RTJ-10-2219), pp. 45-46.

[10] *Id.* at 46.

[11] G.R. No. 130974, August 16, 2006, 499 SCRA 21.

were not personally served on the respondent. There was improper resort to substituted service of summons as the Return of Service does not indicate if there were several attempts made to personally serve summons within a reasonable period to respondent; (2) there were no liquidation reports on the amount withdrawn from the sheriffs' fees by the branch's process server for the service of summons; (3) in all cases, no order was issued by the court for the petitioner to furnish the Office of the Solicitor General (OSG) a copy of the petition and its annexes; (4) several cases proceeded even without the investigation report of the public prosecutor; (5) no notice of appearance was filed by the OSG in several cases and in some cases, the notices of appearance of the OSG appear to be mere photocopies; (6) in a considerable number of cases, the parties, counsel/s, the public prosecutor and the OSG were not duly furnished with copies of the notice of pre-trial conference and court orders. The records also show that no pre-trial briefs were filed in court; (7) petitions, affidavits, and the special power of attorney attached to the records of some cases were not duly notarized; (8) a motion in the records of a particular case was signed only by the petitioner; (9) there were dubious blank documents attached to the records of particular cases which contain the signatures of the psychologist and the petitioner; (10) the exhibits allegedly marked as mentioned in some decisions show that the documents were not actually marked and at times bear different or erroneous markings; (11) there were case records containing only three court orders; (12) most of the records have no minutes and/or transcript of stenographic notes (TSN) of the proceedings conducted; (13) most of the records show that the OSG and the respondent were not duly furnished copies of the decisions rendered; (14) a case was decided on January 24, 2009, a Saturday; (15) several pre-trial briefs in the records were undated and unsigned; (16) several psychological reports attached to the records were undated, unsigned and mere photocopies — the original copies were never presented in court; (17) on March 4, 2009, a Friday, Atty. Teofilo A. Dimaculangan (Atty. Dimaculangan), Branch Clerk of Court, conducted the marking of exhibits in Civil Case No. 08-020 entitled *Singson v. Singson*

for annulment of marriage with Atty. Pamela P. Mercado, counsel for petitioner, without the presence of the prosecutor and without asking the assistance of any other staff of the court; (18) the *ex parte* motion for leave of court to allow service of summons by publication in SP No. 04-078 was notarized by Atty. Dimaculangan; (19) cases were archived even if the inaction was due to the failure of the process server to make a return of service of summons, failure of the prosecutor to submit the report on collusion and the court's failure to set the cases for hearing; (20) in several cases, the counsel who prepared the petition was not the one who handled the pre-trial and trial of the case; and (21) decisions were rendered despite the absence of a formal offer of exhibits for the petitioner or in some cases, no action was taken by the court relative to the formal offer of exhibits submitted.[12]

The Court in a Resolution[13] dated February 1, 2010 resolved to:

1. **RE-DOCKET** the Judicial Audit report as an administrative complaint against:

a. Retired Judge Pablo R. Chavez, Presiding Judge, Regional Trial Court, Br. 87, Rosario, Batangas, for gross dereliction of duty, gross inefficiency, gross incompetence, serious misconduct, corruption and deliberate violation of the law on marriage;

b. Atty. Teofilo A. Dimaculangan, Jr., Clerk of Court VI, same court, for gross dereliction of duty, gross inefficiency, gross incompetence, serious misconduct, corruption, deliberate violation of the law on marriage and violation of Administrative Circular No. 3-2000 dated June 15, 2000 as amended by Administrative Circular No. 35-2004 dated August 20, 2004 which requires that daily collections shall be deposited every day with the nearest branch of the Land Bank of the Philippines and for violation of Supreme Court Circular No. 1-90;

c. Mr. Armando Ermelito M. Marquez, Court Interpreter III, same court, for gross inefficiency in his failure to make the

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[12] *Rollo* (A.M. No. RTJ-10-2219), pp. 47-49.

[13] *Id.* at 504-509.

minutes of the proceedings and for violation of Section 5, Canon IV of the Code of Conduct for Court Personnel for acting as a broker or agent for Atty. Jose Calingasan as declared by Ms. Rene Frane Arillano from Biga, Lobo, Batangas;

d. Ms. Editha E. Bagsic, Court Stenographer III, same court, for gross inefficiency and incompetence in the performance of official duties for violation of Administrative Circular No. 24-90 and corruption in connection with annulment of marriages cases; and

e. Mr. David Caguimbal, Process Server, this court, for gross irregularity in the service of summons on annulment of marriages cases.

2. **WITHHOLD the RELEASE** of the retirement benefits, except the Terminal Leave, of Judge Pablo R. Chavez pending the resolution of this administrative matter;

3. **DIRECT** the Fiscal Monitoring Division of the Office of the Court Management Office, Office of the Court Administrator, to conduct a detailed financial audit and to submit report thereon to determine whether the exact amount of legal fees was collected in all civil cases filed from 2002 to the present and if properly remitted to their appropriate accounts;

4. **DIRECT** all the judicial employees of the Hall of Justice, Rosario, Batangas to regularly observe the mandatory Flag ceremonies under RA 8491 and reiterated in Circular No. 37-98 dated June 22, 1998 and Circular No. 62-2001 dated September 27, 2001; and

5. **DIRECT** Acting Presiding Judge Noel M. Lindog, Regional Trial Court, Br. 87, Rosario, Batangas to:

a. **Take appropriate action** in Crim. Case Nos. x x x which remained without action from the time of their filing or without further action for a considerable length of time and in Crim. Case Nos. x x x wherein accused had not been arraigned despite the lapse of a considerable length of time from the date the cases were filed;

b. **RESOLVE with dispatch** the pending incidents in the following cases and submit copy of each resolution to this Court, through this Office, within ten (10) days from their resolution:

x x x x x x x x x

c. **DECIDE with dispatch** the following criminal and civil cases submitted for decision and submit a copy of each decision to this Court, through this Office, within ten (10) days from its rendition:[14]

x x x x x x x x x (Emphasis in the original.)

In a Resolution[15] dated April 12, 2010, the Court required respondents to file their respective comments. After the respondents filed their comments, the Court, in a Resolution[16] dated December 15, 2010, referred the case to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

II

In its June 3, 2011 Report,[17] the OCA submitted the following recommendations:

1. The retirement benefits of Judge Pablo R. Chavez, Presiding Judge, Regional Trial Court, Branch 87, Rosario, Batangas, be FORFEITED, except his accrued leave credits, for corruption, gross dereliction of duty, gross inefficiency, gross incompetence, serious misconduct and deliberate violation of the law on marriage;

[2.] Atty. Teofilo A. Dimaculangan, Jr., Clerk of Court VI, of the same court, be DISMISSED from office with forfeiture of all retirement benefits, except his accrued leave credits, and with perpetual and absolute disqualification from re-employment in any branch or instrumentality of government, including government-owned or controlled corporations for gross dereliction of duty, gross inefficiency, gross incompetence, serious misconduct, corruption, deliberate violation of the law on marriage, Section 17, paragraph 1, Rule 136 of the Rules of Court, and violations of Administrative Circular No. 3-2000 dated June 15, 2000 as amended and Supreme Court Circular No. 1-90;

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[14] *Id.* at 504-507.

[15] *Id.* at 514-515.

[16] *Id.* at 728.

[17] *Id.* at 931-947.

[3.] Ms. Editha E. Bagsic, Court Stenographer III, of the same court, be DISMISSED from office with forfeiture of all retirement benefits, except [her] accrued leave credits, and with perpetual and absolute disqualification from re-employment in any branch or instrumentality of government, including government-owned or controlled corporations for gross dereliction of duty, gross inefficiency, gross incompetence, serious misconduct, corruption, deliberate violation of the law on marriage and violations of Section 17, paragraph 1, Rule 136 of the Rules of Court, Administrative Circular No. 24-90 dated July 12, 1990, Administrative Circular No. 3-2000 dated June 15, 2000 as amended and Supreme Court Circular No. 1-90;

[4.] Mr. Amando Ermelito M. Marquez, Court Interpreter III, in lieu of suspension from office for three (3) months without pay and other benefits, be FINED the amount of TWENTY THOUSAND ([₱]20,000.00) for gross inefficiency in his failure to prepare the minutes of the proceedings in annulment and nullity of marriage cases and for violation of Section 5, Canon IV of the Code of Conduct for Court Personnel; and

[5.] Mr. David Caguimbal, Process Server, in lieu of suspension from office for three (3) months without pay and other benefits, be FINED the amount of TWENTY THOUSAND ([₱]20,000.00) for gross inefficiency, gross irregularity in the service of summons on annulment of marriages cases.[18]

Meanwhile, on August 4, 2009, the OCA received an undated anonymous letter against the presiding judge, clerk of court, and stenographer of Branch 87. The letter did not identify Judge Chavez as the presiding judge while the clerk of court and stenographer were identified as respondents Atty. Dimaculangan and Editha E. Bagsic (Bagsic), respectively. The letter alleged that: (1) decisions in annulment cases are virtually for sale in Branch 87; (2) parties in annulment cases are not required to attend hearings; (3) notices supposedly sent to the OSG are not reflected in the records; (4) respondent Atty. Dimaculangan is reportedly living a lavish lifestyle out of the money he is making from such illegal activities; (5) respondent Atty. Dimaculangan is engaged in an illicit relationship with respondent

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[18] *Id.* at 946-947.

Bagsic; (6) respondent Atty. Dimaculangan does not observe office hours, spends court funds without authority, and signs orders without the permission of the court.[19]

In a Memorandum[20] dated June 25, 2012, the OCA recommended the consolidation of the undated anonymous letter with Administrative Matter No. RTJ-10-2219 since the June 3, 2011 Report included matters raised in the anonymous letter.

III

1. Judge Pablo R. Chavez

a.

On delay in rendering judgement, Section 15(1) and (2), Article VIII of the Constitution provides that all cases and matters must be decided or resolved by the lower courts within three months from the date of submission of the last pleading. Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary[21] mandates judges to "perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness." Also, Rule 3.05, Canon 3 of the Code of Judicial Conduct exhorts judges to dispose of the court's business promptly and to decide cases within the required periods.

Judge Chavez' unexplained and unreasonable delay in deciding cases and resolving incidents and motions, and his failure to decide the remaining cases before his compulsory retirement constitute gross inefficiency which cannot be tolerated. Inexcusable failure to decide cases within the reglementary period constitutes gross inefficiency, warranting the imposition of an administrative sanction on the defaulting judge.[22]

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[19] *Rollo* (A.M. No. 12-7-130-RTC), pp. 1-4.

[20] *Id.* at 1-2.

[21] A.M. No. 03-05-01-SC, June 1, 2004.

[22] *Office of the Court Administrator v. Soriano*, A.M. No. MTJ-07-1683, September 11, 2013, 705 SCRA 362, 373.

In his Comment, Judge Chavez admits incurring delay in resolving pending incidents and deciding cases. He attributes his delays to his court being a single-sala court. He likewise blames the clerk of court and legal researcher for their failure to remind him of the due dates and assist him in drafting decisions and orders.[23]

Judge Chavez' excuses are not sufficient to absolve him of disciplinary action. Judges and clerks of court should personally conduct a physical inventory of the pending cases in their courts and personally examine the records of each case at the time of their assumption to office, and every semester thereafter. Judges should know which cases are submitted for decision and are expected to keep their own record of cases so that they may act on them promptly.[24] We thus find him guilty of undue delay in rendering a decision.

Undue delay in rendering a decision or order is classified as a less serious charge under Section 9, Rule 140 of the Rules of Court. It is punishable by (1) suspension from office without salary and other benefits for not less than 1 month nor more than 3 months, or (2) a fine of more than ₱10,000 but not exceeding ₱20,000.[25]

b.

On the anomalies found in Judge Chavez' court, the Code of Judicial Conduct provides:

Rule 3.08. – A judge should diligently discharge administrative responsibilities, maintain professional competence in court management, and facilitate the performance of the administrative functions of other judges and court personnel.

Rule 3.09. – A judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business,

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[23] *Rollo* (A.M. No. RTJ-10-2219), p. 647.

[24] *Office of the Court Administrator v. Trocino,* A.M. No. RTJ-05-1936, May 29, 2007, 523 SCRA 262, 272.

[25] RULES OF COURT, Rule 140, Sec. 9(1) and Sec. 11(B).

and require at all times the observance of high standards of public service and fidelity.

Rule 3.10. - A judge should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct of which the judge may have become aware.

Judge Chavez failed to adhere to these standards. He was inefficient in managing his caseload and grossly negligent in running the affairs of his court. This is evidenced by the following anomalies discovered by the judicial audit team: (1) case records were not well kept since they were not chronologically arranged and had no pagination; (2) legal fees forms were not attached to the records although the amount allegedly paid were enumerated in the pleadings while there were cases without the breakdown of the fees paid; (3) no documents supporting the amount of sheriff's fees for the service of summons were available; (4) the civil and criminal docket books were not updated and the civil docket book contained erasures as to the status of cases for nullity of marriage; (5) the court's semestral docket inventory for June to December 2008 was not accurate; (6) records in some criminal cases had no certificates of arraignment; (7) archiving of cases were resorted to even if the inaction were attributable to the non-compliance of government officers, bureaus and agencies to the directives of the court, and the court's failure to set the cases for hearing; and (8) the court staff in the RTC do not observe the mandatory flag ceremonies under Republic Act No. 8491 and reiterated in Circular No. 37-98 dated June 22, 1998 and Circular No. 62-2001 dated September 27, 2001.[26]

Judges are charged with exercising extra care in ensuring that the records of the cases and official documents in their custody are intact. They must adopt a system of record management and organize their dockets to bolster the prompt and efficient dispatch of business. Further, as administrative officers of the court, judges should organize and supervise court personnel to ensure the prompt and efficient dispatch of business,

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[26] *Rollo* (A.M. No. RTJ-10-2219), pp. 45-46.

as well as the observance of high standards of public service and fidelity at all times.[27]

Acting on the findings of the judicial audit team, we hold that Judge Chavez is liable for gross neglect of duty. Gross neglect of duty refers to negligence that is characterized by a glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally; or by acting with a conscious indifference to consequences with respect to other persons who may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to take on their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.[28]

In this case, the totality of the findings of the judicial audit team proves Judge Chavez' reckless and irresponsible attitude towards his duties. He utterly and glaringly lacked the necessary care and organization in handling and managing his court and personnel. He was completely remiss in his duties to ensure that there is order and inefficiency in his court, to maintain a well-organized system of record-keeping and docket management, and to supervise his personnel and make sure that they are aware of and comply with the exacting standards imposed on all public servants.

Judge Chavez himself admits that he has been overly lenient and lax and that, as Presiding Judge for 11 years, "he overly relied on the representations of his [c]ourt staff, particularly his Clerk of Court that the case records and disposition of cases are proper and in order." He laments that he is a victim of his court staff's betrayal and perfidy.[29]

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[27] *Office of the Court Administrator v. Alon,* A.M. No. RTJ-06-2022, June 27, 2007, 525 SCRA 786, 791-792.

[28] *Lucas v. Dizon*, A.M. No. P-12-3076, November 18, 2014, 740 SCRA 506, 515.

[29] *Rollo* (A.M. No. RTJ-10-2219), p. 649.

Unfortunately for Judge Chavez, his defense does not exonerate him from the penalties under the law. Judges cannot be excused by the acts of their subordinates because court employees are not the guardians of a judge's responsibility. Judges should not merely rely on their court staff for the proper management of the court's business.[30] Being in legal contemplation the head of his branch, he was the master of his own domain who should be ready and willing to take the responsibility for the mistakes of his subjects, as well as to be ultimately responsible for order and efficiency in his court. He could not hide behind the inefficiency or the incompetence of any of his subordinates.[31]

Gross neglect of duty is a grave offense punishable by dismissal.[32] The penalty of dismissal carries with it "cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking civil service examinations."[33]

c.

Section 17, Rule XIV of the Civil Service Commission Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws[34] provides that when the respondent is guilty of two or more charges, the penalty for the most serious charge should be imposed and the other charges may be considered as aggravating circumstances. In this case, Judge Chavez is guilty of the grave offense of gross neglect of duty, and the less serious charge of undue delay in rendering decisions.

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[30] *Office of the Court Administrator v. Trocino*, *supra* note 24.

[31] *In Re: Report on the Judicial Audit Conducted in the Regional Trial Court, Br. 45, Urdaneta City, Pangasinan,* A.M. No. 08-4-253-RTC, January 12, 2011, 639 SCRA 254, 271.

[32] Revised Rules on Administrative Cases in the Civil Service, Rule 10, Sec. 46(A)(2).

[33] Revised Rules on Administrative Cases in the Civil Service, Rule 10, Sec. 52(A).

[34] CSC Resolution No. 91-1631 (1991).

Since Judge Chavez is already retired, the Court imposes a penalty of forfeiture of Judge Chavez' retirement benefits.

2. Atty. Teofilo A. Dimaculangan, Jr.

The undated anonymous letter alleged that: (1) respondent Dimaculangan led the sale of decisions in annulment cases in Branch 87; (2) parties in annulment cases were not required to attend hearings; (3) notices supposedly sent to the OSG were not reflected in the records; (4) in one case, the court issued an order of dismissal without notifying the private complainant; (5) some decisions or orders of the court were signed by respondent Dimaculangan instead of the presiding judge; (6) respondent Dimaculangan would ask the court's process server to sign returns of summons in annulment cases even if no pleading was actually served; and (7) respondent Dimaculangan used court funds for personal expenses and only returned the money at a later date.[35]

Some of the allegations in the undated anonymous letter are consistent with the judicial audit's findings, to wit: (1) Judge Chavez himself admitted in his Comment that a number of the decisions and orders in the annulment cases were not decided by him since the signatures appearing on them were not his;[36] (2) return of summons or registry receipts were signed by the process server, as instructed by his "superior" though no summons or pleadings were served;[37] (3) a number of cases did not have TSNs or minutes in the records; (4) forms for legal fees were not attached to the records of the cases; (5) summons were improperly served or not served at all to the OSG or the respondent; (6) there was no notice of appearance of the OSG in a number of cases; (7) there were no pre-trial briefs in a number of cases; (8) some psychological reports were undated, unsigned or mere photocopies; and (9) there was no proof that

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[35] *Rollo* (A.M. No. 12-7-130-RTC), pp. 3-4.

[36] *Rollo* (A.M. No. RTJ-10-2219), p. 648.

[37] *Id.* at 945.

a copy of the decision was furnished the OSG and/or respondent in a number of cases.[38]

In his Comment,[39] respondent Dimaculangan blames the clerks-in-charge having physical custody of the court's folders for the failure to: (1) chronologically arrange and paginate the case records; (2) update the court's docket books; and (3) attach the forms for legal fees in civil case folders. Meanwhile, he blames respondent Marquez for the failure to attach the certificates of arraignment in cases where the accused had entered their plea. He also makes a sweeping statement that erasures in the general docket books were for the purpose of correcting erroneous entries.

We stress that clerks of court are the chief administrative officers of their respective courts. Their administrative functions are vital to the prompt and proper administration of justice, to wit:

> They must show competence, honesty and probity since they are charged with safeguarding the integrity of the court and its proceedings x x x.
>
> x x x x x x x x x
>
> x x x They are charged with the efficient recording, filing and management of court records, besides having administrative supervision over court personnel. They play a key role in the complement of the court and cannot be permitted to slacken on their jobs under one pretext or another. They must be assiduous in performing their official duties and in supervising and managing court dockets and records. x x x[40] (Citations omitted.)

We find that the following circumstances raise the suspicion that respondent Dimaculangan was indeed involved in the anomalies related to annulment cases: (1) the allegations in

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[38] *Id.* at 45-49.

[39] *Id.* at 545-552.

[40] *Office of the Court Administrator v. Lopez*, A.M. No. MTJ-11-1790, December 11, 2013, 712 SCRA 153, 170-173.

the anonymous letter; (2) the admission of Judge Chavez that his signatures in some of the decisions in the annulment cases were forged and that he mostly relied on his clerk of court; and (3) the admission of the process server that he merely signed some of the returns of summons and registry receipts as instructed by his "superior."

a.

Regarding the pre-marking of exhibits without the presence of the prosecutor in *Singson v. Singson* for annulment of marriage, respondent Dimaculangan alleged that he obtained the consent of the prosecutor. There was, however, no evidence proving this claim. As branch clerk of court, respondent Dimaculangan is the administrative assistant of the presiding judge. The presiding judge may, before the start of the pre-trial conference, refer the case to the branch clerk of court for a preliminary conference to assist the parties in reaching a settlement, to mark documents or exhibits to be presented by the parties and copies thereof to be attached to the records after comparison and to consider such other matters as may aid in the prompt disposition of the case.[41] The rules require the presence of *both* parties to the case. Thus, it was highly irregular for respondent Dimaculangan to conduct the pre-marking in the prosecutor's absence.

b.

As to respondent Dimaculangan's act of notarizing the *ex parte* motion for leave of court to serve summons by publication in SP No. 04-078, he asserts that it was an exercise of his official functions as an *ex-officio* notary public. OCA Circular No. 156-2006[42] authorized clerks of court of the RTCs to notarize documents subject to the following conditions:

(i) all notarial fees charged in accordance with Section 7(o) of Rule 141 of the Rules of Court, and, with respect to private documents,

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[41] A.M. No. 03-1-09-SC, Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures, July 13, 2004.

[42] Authority to Notarize Documents, November 16, 2006.

in accordance with the notarial fee that the Supreme Court may prescribe in compliance with Section 1, Rule V of the 2004 Rules on Notarial Practice, shall be for the account of the Judiciary; and (ii) they certify in the notarized documents that there are no notaries public within the territorial jurisdiction of the Regional Trial Court[.]

There was no evidence that respondent Dimaculangan complied with these requirements.

c.

The Financial Audit Team also found the following: (1) there was a cash shortage of ₱18,000 in the Fiduciary Fund; (2) respondent Dimaculangan did not deposit his collections within the prescribed period; (3) no legal fees were paid in the petition for annulment of marriage filed by Bagsic against Edilberto L. Rivera; (3) no collection of the amount to defray travel expenses needed for service of summons, subpoena and other court processes were made in 54 petitions for declaration of nullity of marriage/annulment of marriage cases.[43]

SC Administrative Circular No. 3-2000[44] dated June 15, 2000 requires that the collections for the Judiciary Development Fund (JDF) be deposited daily with the nearest Land Bank branch through a designated account number. If a daily deposit is not possible, it should be made at the end of every month, provided that if the JDF collection reaches ₱500, the money shall be deposited immediately.

These guidelines emphasize the importance and seriousness of the duty imposed upon clerks of courts who manage and secure the funds of the Court. Mere delay in remitting the funds collected has, in fact, been considered gross neglect of duty or grave misconduct.[45]

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[43] *Rollo* (A.M. No. RTJ-10-2219), pp. 898-909.

[44] Re: Guidelines in the Allocation of the Legal Fees Collected Under Rule 141 of the Rules of Court, as Amended, Between the General Fund and Judiciary Development Fund.

[45] *Office of the Court Administrator v. Zerrudo*, A.M. No. P-11-3006, October 23, 2013, 708 SCRA 348, 353.

Clerks of court are the custodians of the courts' funds and revenues, records, properties, and premises. They are liable for any loss, shortage, destruction or impairment of those entrusted to them. Any shortages in the amounts to be remitted and the delay in the actual remittance constitute gross neglect of duty for which the clerk of court shall be held administratively liable.[46]

The OCA's findings show that respondent Dimaculangan incurred a cash shortage of ₱18,000 in the Fiduciary Fund and failed to deposit the court's collections as required under SC Administrative Circular No. 3-2000. Thus, we find that respondent Dimaculangan has been remiss in his duty to promptly remit cash collections and account for the shortages of court funds under his care.

d.

Given respondent Dimaculangan's numerous and grave infractions, we find that he was not only remiss in his duties; he took advantage of his position as clerk of court to circumvent and disregard the rules. His acts do not only point to gross neglect of duty but also grave misconduct. Misconduct is grave if corruption, clear intent to violate the law or flagrant disregard of an established rule is present; otherwise, the misconduct is only simple.[47]

In this case, the facts show that respondent Dimaculangan disregarded established rules of the Court. Gross neglect of duty and grave misconduct incur the penalty of dismissal. As respondent Dimaculangan has already resigned,[48] all the benefits to which he may have been entitled, except earned leave credits, are forfeited. He is also disqualified from holding public office in the future, including in government-owned and controlled corporations.

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[46] *Office of the Court Administrator v. Acampado*, A.M. Nos. P-13-3116 & P-13-3112, November 12, 2013, 709 SCRA 254, 270-271.

[47] *Re: Melchor Tiongson, Head Watcher, During the 2011 Bar Examinations*, B.M. No. 2482, April 1, 2014, 720 SCRA 294, 299.

[48] *Rollo* (A.M. No. RTJ-10-2219), p. 521.

3. David Caguimbal

Respondent Caguimbal, in his Comment[49] dated June 28, 2010, denies the charges against him and states that he performed his duties with utmost good faith and honesty. Further, he alleges that in cases where summons were served to persons other than the respondent or defendant, he made sure that the summons were received by persons of suitable age and discretion. Respondent Caguimbal claims that he is unsure whether he issued and signed some of the returns of summons concerning annulment of marriages. In his Supplemental Comment[50] dated September 30, 2010, he admits that, in some annulment cases, he never served the summons yet he signed the process server returns upon his superior's instructions.

We have said that the duty of a process server is vital to the administration of justice. A process server's primary duty is to serve court notices which precisely requires utmost care on his part to ensure that all notices assigned to him are duly served on the parties.[51] It is through the process server that defendants learn of the action brought against them by the complainant. Significantly, it is also through the service of summons by the process server that the trial court acquires jurisdiction over the defendant. It is therefore important that summonses, other writs and court processes be served expeditiously.[52]

Respondent Caguimbal committed grave misconduct and serious dishonesty when he signed process server returns without actually serving any such summons or court process. Misconduct is an unacceptable behavior that transgresses the established rules of conduct for public officers. To be considered as grave and to warrant dismissal from the service, the misconduct must be serious, important, weighty, momentous and not trifling. It

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[49] *Id.* at 529-531.

[50] *Id.* at 723-724.

[51] *Dalmacio-Joaquin v. Dela Cruz*, A.M. No. P-06-2241, July 10, 2012, 676 SCRA 55, 61.

[52] *Musni v. Morales*, A.M. No. P-99-1340, September 23, 1999, 315 SCRA 85, 90-91.

must imply wrongful intention and not a mere error of judgment and it must have a direct relation to, and be connected with, the performance of his official duties amounting either to maladministration, willful, intentional neglect or failure to discharge the duties of the office. On the other hand, dishonesty is the disposition to lie, cheat, deceive, or defraud; unworthiness; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[53]

Here, there is evidence to show that respondent Caguimbal intentionally neglected the discharge of his duty and, as a consequence, deceived both the court and the litigants. Assuming that he was merely instructed by his superior to falsify the return, he knew or ought to have known that such instruction is illegal. Respondent Caguimbal should not have tolerated such illegal act. Instead, he should have taken measures to stop it.

Both grave misconduct and dishonesty are grave offenses which are punishable by dismissal even for the first offense.[54] Considering respondent Caguimbal's retirement from service in 2013, all the benefits to which he may have been entitled, except earned leave credits, will be forfeited.[55]

4. Editha E. Bagsic

The main charge against respondent Bagsic involves her failure to transcribe TSNs in nullity and annulment of marriage cases. The OCA also found that the TSNs were not attached to their proper case records.

Stenographers should comply faithfully with paragraph 1, Section 17, Rule 136, of the Rules of Court:

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[53] *Aguilar v. Valino,* A.M. No. P-07-2392, February 25, 2009, 580 SCRA 242, 256-257.

[54] Revised Rules on Administrative Cases in the Civil Service, Rule 10, Sec. 46(A)(1) & (3).

[55] Respondent Caguimbal's compulsory retirement was in December 2013 but he has not yet submitted application.

Sec. 17. *Stenographer*. – It shall be the duty of the stenographer who has attended a session of a court either in the morning or in the afternoon, to deliver to the clerk of court, immediately at the close of such morning or afternoon session, all the notes he has taken, to be attached to the record of the case; and it shall likewise be the duty of the clerk to demand that the stenographer comply with said duty. The clerk of court shall stamp the date on which such notes are received by him. When such notes are transcribed, the transcript shall be delivered to the clerk, duly initialed on each page thereof, to be attached to the record of the case.

Further, SC Administrative Circular No. 24-90[56] requires all stenographers to transcribe all stenographic notes and attach the transcripts to the record of the case not later than 20 days from the time the notes were taken. Stenographers shall also accomplish a verified monthly certification to monitor their compliance with this directive. The stenographer's salary shall be withheld in case of failure or refusal to submit the required certification.

Respondent Bagsic explained that it is their practice to keep TSNs in their cabinets. If there were stenographic notes that were not transcribed, she claims that this was due to lack of time. These excuses, however, are not acceptable. Clearly, respondent Bagsic was remiss in her duties as stenographer and should be held liable for simple neglect of duty.

Simple neglect of duty is the failure to give attention to a task, or the disregard of a duty due to carelessness or indifference.[57] Under Rule 10, Section 46(D)(1) of the Revised Rules on Administrative Cases in the Civil Service, simple neglect of duty, classified as a less grave offense, is punishable by suspension of 1 month and 1 day to 6 months for the first offense. Under Section 19, Rule XIV of the Civil Service Commission Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, a fine may be imposed in the alternative.

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[56] Revised Rules on Transcription of Stenographic Notes and Their Transmission to Appellate Courts (1990).

[57] *Dajao v. Lluch*, A.M. OCA No. P-02-1570, April 3, 2002, 380 SCRA 104, 108-109.

Since respondent Bagsic resigned from the RTC in December 2009, we find the penalty of a fine in the amount of ₱5,000 reasonable in line with the Court's rulings in similar cases.[58]

5. Armando Ermelito M. Marquez

a.

In his Comment[59] dated September 17, 2010, respondent Marquez claims that his failure to prepare the minutes of the proceedings was due to lack of sufficient time. He further claims that he prioritized criminal cases over civil cases. His excuses, however, do not persuade.

As court interpreter, respondent Marquez is duty-bound to prepare and sign the minutes of court sessions. In *Reyes v. Pabilane,*[60] we discussed the importance of the minutes:

> [F]or it gives a brief summary of the events that take place thereat including a statement of the date and time of the session; the name of the judge, clerk of court, court stenographer, and court interpreter who are present; the names of the counsel for the parties who appear; the parties presenting evidence; the names of the witnesses who testified; the documentary evidence marked; and the date of the next hearing.[61] (Citation and underscoring omitted.)

Respondent Marquez' failure to prepare and sign the minutes of the court proceedings constitutes simple neglect of duty.[62]

b.

Respondent Marquez also denies that he acted as an agent for Atty. Jose Calingasan when he referred said counsel to Ms. Rene Frane Arillano for possible lawyer-client relationship.

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[58] *Ruste v. Selma*, A.M. No. P-09-2625, October 9, 2009, 603 SCRA 104; *Ang Kek Chen v. Javalera-Sulit*, A.M. No. MTJ-06-1649, September 12, 2007, 533 SCRA 11.

[59] *Rollo* (A.M. No. RTJ-10-2219), pp. 719-721.

[60] A.M. No. P-09-2696, January 12, 2011, 639 SCRA 287.

[61] *Id.* at 291.

[62] *Id.*

He claims that he merely provided the names of counsels within the vicinity of the Hall of Justice.

Section 5, Canon IV of the Code of Conduct for Court Personnel[63] enjoins all court personnel from recommending private attorneys to litigants, prospective litigants or anyone dealing with the judiciary. As an employee of the judiciary, respondent Marquez must maintain a neutral attitude in dealing with party-litigants. All court personnel should be reminded that they have no business getting personally involved in matters directly emanating from court proceedings, unless expressly so provided by law. Since the image of the courts of justice is reflected in the conduct, official or otherwise, of even its minor employees, it is the imperative duty of everyone involved in the dispensation of justice to maintain the courts' integrity and standing as true temples of justice and avoid any impression or impropriety, misdeed or negligence. While court employees are not totally prohibited from rendering aid to others, they should see to it that the assistance, albeit involving acts unrelated to their official functions, does not in any way compromise the public's trust in the justice system.[64]

In this case, respondent Marquez transgressed the strict norm of conduct required from court employees by referring a prospective litigant to a private lawyer. His act gave the impression that the court is indorsing a particular lawyer, thereby undermining the public's faith in the impartiality of the courts.

We thus hold that respondent Marquez is guilty of simple misconduct. Simple misconduct has been defined as an unacceptable behavior which transgresses the established rules of conduct for public officers, work-related or not.[65]

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[63] A.M. No. 03-06-13-SC, June 1, 2004.

[64] *Holasca v. Pagunsan, Jr.*, A.M. No. P-14-3198, July 23, 2014, 730 SCRA 357, 374.

[65] *Abulencia v. Hermosisima*, A.M. SB-13-20-P, June 26, 2013, 699 SCRA 576, 579.

Consistent with the rulings involving simple neglect of duty[66] and simple misconduct committed by court employees,[67] we impose the fine of ₱5,000 on respondent Marquez.

IV

In *Leave Division, Office of Administrative Services, Office of the Court Administrator v. De Lemos*,[68] we reminded court employees:

> [A]ll court employees must exercise at all times a high degree of professionalism and responsibility, as service in the Judiciary is not only a duty but also a mission. The Court has repeatedly emphasized that everyone in the judiciary, from the presiding judge to the clerk, must always be beyond reproach, free of any suspicion that may taint the judiciary. Public service requires utmost integrity and discipline. A public servant must exhibit at all times the highest sense of honesty and integrity, for no less than the Constitution mandates the principle that "a public office is a public trust and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency." As the administration of justice is a sacred task, the persons involved in it ought to live up to the strictest standards of honesty and integrity. Their conduct, at all times, must not only be characterized by propriety and decorum, but must also be above suspicion. Thus, every employee of the judiciary should be an example of integrity, uprightness, and honesty.[69]

WHEREFORE, Judge Pablo R. Chavez is found **GUILTY** of gross neglect of duty and undue delay of rendering decisions. **Atty. Teofilo A. Dimaculangan, Jr.** is found **GUILTY** of gross neglect of duty and grave misconduct. **David Caguimbal** is found **GUILTY** of grave misconduct and serious dishonesty.

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[66] *Tudtud v. Caayon*, A.M. No. P-02-1567, March 28, 2005, 454 SCRA 10.

[67] *Reas v. Relacion*, A.M. No. P-05-2095, February 9, 2011, 642 SCRA 266.

[68] A.M. No. P-11-2953, September 7, 2011, 657 SCRA 1.

[69] *Id.* at 8, citing *Office of the Court Administrator v. Isip*, A.M. No. P-07-2390, August 19, 2009, 596 SCRA 407, 413-414.

In lieu of dismissal from service which may no longer be imposed due to their respective retirements and resignation, as a penalty for their offense, all their benefits, except accrued leave credits, are hereby **FORFEITED**. They are further disqualified from any reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations and financial institutions.

Editha E. Bagsic is found **GUILTY** of simple neglect of duty and is **FINED** in the amount of ₱5,000. This amount may be deducted from whatever benefits respondent Bagsic may still be entitled to after her voluntary resignation.

Armando Ermelito M. Marquez is found **GUILTY** of simple neglect of duty and simple misconduct and **FINED** in the amount of ₱5,000. He is warned that a repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Mendoza, Reyes, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

EN BANC

[G.R. No. 197762. March 7, 2017]

CAREER EXECUTIVE SERVICE BOARD represented by CHAIRPERSON BERNARDO P. ABESAMIS, EXECUTIVE DIRECTOR MA. ANTHONETTE VELASCO-ALLONES, and DEPUTY EXECUTIVE DIRECTOR ARTURO M. LACHICA, *petitioner, vs.* **CIVIL SERVICE COMMISSION represented by CHAIRMAN FRANCISCO T. DUQUE III AND**

PUBLIC ATTORNEY'S OFFICE, CHIEF PUBLIC ATTORNEY PERSIDA V. RUEDA-ACOSTA, DEPUTY CHIEF PUBLIC ATTORNEYS MACAPANGCAT A. MAMA, SYLVESTRE A. MOSING, REGIONAL PUBLIC ATTORNEYS CYNTHIA M. VARGAS, FRISCO F. DOMALSIN, TOMAS B. PADILLA, RENATO T. CABRIDO, SALVADOR S. HIPOLITO, ELPIDIO C. BACUYAG, DIOSDADO S. SAVELLANO, RAMON N. GOMEZ, MARIE G-REE R. CALINAWAN, FLORENCIO M. DILOY, EDGARDO D. GONZALEZ, NUNILA P. GARCIA, FRANCIS A. CALATRAVA, DATUMANONG A. DUMAMBA, EDGAR Q. BALANSAG, PUBLIC ATTORNEY IV MARVIN R. OSIAS, PUBLIC ATTORNEY IV HOWARD B. AREZA, PUBLIC ATTORNEY IV IMELDA C. ALFORTE-GANANCIAL, *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI* AND PROHIBITION; CONCURRENCE OF TWO REQUISITES IS NECESSARY IN ORDER THAT RESORT TO THE EXTRAORDINARY REMEDIES OF *CERTIORARI* AND PROHIBITION WILL BE CONSIDERED PROPER.— It is settled that a resort to the extraordinary remedies of *certiorari* and prohibition is proper only in cases where (a) a tribunal, a board or an officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (b) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. Rule 65 of the Rules of Civil Procedure requires the concurrence of both these requisites: x x x [*C*]*ertiorari* and prohibition are proper only if both requirements are present, that is, if the appropriate grounds are invoked; **and** an appeal or any plain, speedy, and adequate remedy is unavailable. Mere reference to a ground under Rule 65 is not sufficient.

2. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; CIVIL SERVICE COMMISSION (CSC); THE CONCEPT

OF "CENTRAL PERSONNEL AGENCY" IS UNDERSTOOD TO INCLUDE THE AUTHORITY TO PROMULGATE AND ENFORCE POLICIES ON PERSONNEL ACTIONS, TO CLASSIFY POSITIONS, AND TO EXERCISE ALL POWERS AND FUNCTIONS INHERENT AND INCIDENTAL TO HUMAN RESOURCES MANAGEMENT.— Article IX-B of the 1987 Constitution entrusts to the CSC the administration of the civil service, which is comprised of "all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters." In particular, Section 3 of Article IX-B provides for the mandate of this independent constitutional commission: x x x Although the specific powers of the CSC are not enumerated in the final version of 1987 Constitution, it is evident from the deliberations of the framers that the concept of a "central personnel agency" was considered all-encompassing. The concept was understood to be sufficiently broad as to include the authority to promulgate and enforce policies on personnel actions, to classify positions, and to exercise all powers and functions inherent in and incidental to human resources management.

3. ID.; ID.; ID.; CAREER EXECUTIVE SERVICE BOARD (CESB); THE SPECIFIC POWERS OF THE CESB OVER MEMBERS OF THE CAREER EXECUTIVE SERVICE (CES) MUST BE INTERPRETED IN A MANNER THAT TAKES INTO ACCOUNT THE COMPREHENSIVE MANDATE OF THE CSC UNDER THE CONSTITUTION AND OTHER STATUTES; CASE AT BAR.— It is a basic principle in statutory construction that statutes must be interpreted in harmony with the Constitution and other laws. In this case, the specific powers of the CESB over members of the CES must be interpreted in a manner that takes into account the comprehensive mandate of the CSC under the Constitution and other statutes. The present case involves the classification of positions belonging to the CES and the qualifications for these posts. These are matters clearly within the scope of the powers granted to the CESB under the Administrative Code and the Integrated Reorganization Plan. However, this fact alone does not push the matter beyond the reach of the CSC. As previously discussed, the CSC, as the central personnel agency of the

government, is given the comprehensive mandate to administer the civil service under Article IX-B, Section 3 of the 1987 Constitution; and Section 12, Items (4), (5), and (14) of the Administrative Code. It has also been expressly granted the power to promulgate policies, standards, and guidelines for the civil service; and to render opinions and rulings on all personnel and other civil service matters. Here, the question of whether the subject PAO positions belong to the CES is clearly a civil service matter falling within the comprehensive jurisdiction of the CSC. Further, considering the repercussions of the issue concerning the appointments of those occupying the posts in question, the jurisdiction of the CSC over personnel actions is implicated. It must likewise be emphasized that the CSC has been granted the authority to review the decisions of agencies attached to it under Section 12(11), Chapter 3, Subtitle A, Title I, Book V of the Administrative Code: x x x Since the CESB is an attached agency of the CSC, the former's decisions are *expressly* subject to the CSC's review on appeal.

4. ID.; LEGISLATIVE DEPARTMENT; THE AUTHORITY TO PRESCRIBE QUALIFICATIONS FOR POSITIONS IN THE GOVERNMENT IS LODGED IN CONGRESS AS PART OF ITS PLENARY LEGISLATIVE POWER TO CREATE, ABOLISH AND MODIFY PUBLIC OFFICES TO MEET SOCIETAL DEMANDS; CASE AT BAR.— The authority to prescribe qualifications for positions in the government is lodged in Congress as part of its plenary legislative power to create, abolish and modify public offices to meet societal demands. From this authority emanates the right to change the qualifications for existing statutory offices. It was in the exercise of this power that the legislature enacted Section 5 of R.A. 9406, which provides for the qualifications for the Chief Public Attorney, Deputy Chief Public Attorneys, Regional Public Attorneys and Assistant Regional Public Attorneys: x x x While the CESB has been granted the power to prescribe entrance requirements for the third-level of the civil service, this power cannot be construed as the authority to modify the qualifications specifically set by law for certain positions. Hence, even granting that the occupants of the subject positions indeed exercise managerial and executive functions as incidents of their primary roles, the CESB has no power to impose additional qualifications for them. It cannot use the authority granted to it by Congress

itself to defeat the express provisions of statutes enacted by the latter. It is also beyond the power of the CESB to question or overrule the specific qualifications imposed by Congress for the subject positions. The legislature must be deemed to have considered the entirety of the functions attendant to these posts when it enacted R.A. 9406 and prescribed the relevant qualifications for each position. The choice **not** to require third level eligibility in this instance must be respected — not only by the CESB but also by this Court — as a matter that goes into the wisdom and the policy of a statute.

5. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987, AS AMENDED BY REPUBLIC ACT NO. 9406; THE AMENDMENT WAS DONE TO PROVIDE THE SAME QUALIFICATIONS FOR APPOINTMENT, RANK, SALARIES, ALLOWANCES, AND RETIREMENT PRIVILEGES OF SENIOR OFFICIALS OF BOTH THE PUBLIC ATTORNEY'S OFFICE (PAO) AND THE NATIONAL PROSECUTION SERVICE (NPS); CASE AT BAR.— Section 5 of R.A. 9406 amended the Administrative Code of 1987. The amendment was done to provide for "the same qualifications for appointment, rank, salaries, allowances, and retirement privileges" of senior officials of both the PAO and the NPS. The deliberations of Congress on R.A. 9406 reveal its intention to establish parity between the two offices. The lawmakers clearly viewed these officers as counterparts in the administration of justice: x x x To fulfill the legislative intent to accord equal treatment to senior officials of the PAO and the NPS, parity in their qualifications for appointment must be maintained. Accordingly, the revised qualifications of those in the NPS must also be considered applicable to those in the PAO. The declassification of positions in the NPS should thus benefit their counterpart positions in the PAO. There is no justification for treating the two offices differently, given the plain provisions and the rationale of the law. This Court would render nugatory both the terms and the intent of the law if it sustains the view of the CESB. We cannot construe R.A. 9046 in relation to P.D. 1275 only, while disregarding the amendments brought about by R.A. 10071. To do so would defeat the legislature's very purpose, which is to equalize the qualifications of the NPS and the PAO.

BERSAMIN, *J.*, *concurring and dissenting opinion*:

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI* AND PROHIBITION; RULE 65 ALSO CONTEMPLATES A SITUATION IN WHICH APPEAL OR ANOTHER REMEDY IN THE ORDINARY COURSE OF LAW IS AVAILABLE BUT SUCH APPEAL OR OTHER REMEDY IS NOT PLAIN, SPEEDY AND ADEQUATE TO ADDRESS THE PETITIONER'S GRIEVANCE, HENCE, THE PETITIONER IS CALLED UPON TO ALLEGE IN THE PETITION FOR *CERTIORARI* OR PROHIBITION AND TO PROVE THAT THERE IS NO PLAIN, SPEEDY, AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW AVAILABLE TO HIM.— Section 1 and Section 2 of Rule 65, indeed, require that "there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law." Yet, the requirement does not necessarily mean that the availability of the appeal immediately bars the resort to *certiorari* and prohibition. My understanding is that Rule 65 also contemplates a situation in which appeal or another remedy in the ordinary course of law is available but such appeal or other remedy is not plain, speedy and adequate to address the petitioner's grievance. The petitioner is then called upon to so allege in the petition for *certiorari* or prohibition and to prove that there is no plain, speedy, and adequate remedy in the ordinary course of law available to him, x x x The phrase *no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law* in Section 1 and Section 2 of Rule 65 simply means that the appeal or other remedy available in the ordinary course of law is not equally beneficial, speedy and adequate. The appropriate remedy should not be merely one that at some time in the future will bring about a revival of the judgment complained of in the *certiorari* proceeding, but one that will promptly relieve the petitioner from the injurious effects of that judgment and the acts of the inferior court or tribunal concerned. Consequently, the availability of the appeal under Rule 43 as a recourse from the adverse decision of the CSC should not immediately preclude the petitioner's resort to the special civil actions for *certiorari* and prohibition provided the petitioner could sufficiently show that such remedy would not be beneficial, speedy and adequate to address its grievance.

2. ID.; ID.; ID.; THE PETITION FOR *CERTIORARI* OR PROHIBITION MAY STILL PROSPER DESPITE THE AVAILABILITY OF SUCH OTHER REMEDY IN CERTAIN EXCEPTIONAL CIRCUMSTANCES.—The petition for *certiorari* or prohibition may still prosper despite the availability of such other remedy in certain exceptional circumstances, like: (*a*) when public welfare and the advancement of public policy so dictate; (*b*) when the interests of substantial justice so require; or (*c*) when the questioned order amounts to an oppressive exercise of judicial authority.

3. ID.; ID.; ID.; ID.; THE ASSAILED DECISION OF THE CIVIL SERVICE COMMISSION (CSC) IN CASE AT BAR COULD BE CHALLENGED BY PETITION FOR *CERTIORARI* AND PROHIBITION PROVIDED THE REQUISITES FOR THE CHALLENGE WERE PROPERLY ALLEGED AND DULY ESTABLISHED; EXPLAINED.— The petition for *certiorari* and prohibition laid down the issue of which between the petitioner and the CSC had jurisdiction to resolve the question of eligibility for certain officials of the PAO. On one hand, the CSC asserted its constitutional mandate to exercise jurisdiction over all personnel matters involving government employees; on the other, the petitioner claimed it had jurisdiction over civil service eligibility concerns. Accordingly, the Court should hold instead that the petition for *certiorari* and prohibition was an appropriate remedy for the petitioner because of its allegation that the CSC committed grave abuse of discretion in rendering the assailed decision. It was of.no significance that questions of law or of fact, or mixed questions of law or fact may be raised through the petition for review under Rule 43. x x x The assailed decision of the CSC was not within the purview of the coverage of Section 1, *supra*, because it was not in the category of the "*awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions*" that were reviewable under Rule 43. It related to the CSC's determination of the strictly legal question of which between the petitioner and CSC had jurisdiction over the question in dispute. The awards, judgments, final orders or resolutions of the CSC reviewable under Rule 43 concern actions and disciplinary measures by or against civil service officers and employees. Consequently, the assailed decision of the CSC could be challenged by petition for *certiorari* and prohibition provided the requisites for the challenge were properly alleged and duly established.

D E C I S I O N

SERENO, *C.J.*:

The dispute in this case concerns the classification of certain positions in the Public Attorney's Office (PAO).The Court is asked to determine, in particular, whether these positions are properly included in the Career Executive Service (CES); and whether the occupants of these positions must obtain third-level eligibility to qualify for permanent appointment. To resolve these questions, the Court must also delineate the respective jurisdictions granted by law to the competing authorities involved in this case – the Civil Service Commission (CSC) and the Career Executive Service Board (CESB).

FACTUAL ANTECEDENTS

In this Petition for Certiorari and Prohibition,[1] the CESB[2] seeks the reversal of the Decision[3] and Resolution[4] of the CSC declaring that (a) it had the jurisdiction to resolve an appeal from a CESB Resolution[5] refusing to declassify certain positions in PAO; and (b) the PAO positions involved in the appeal do not require third-level eligibility.

The facts leading to the controversy are not in dispute.

On 24 September 2010, the PAO received a copy of the CESB Report on the CES Occupancy of the Department of Justice

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[1] Petition for *Certiorari* and Prohibition filed on 9 August 2011, *rollo*, pp. 6-52.

[2] Represented by former CSC Chairperson Bernardo P. Abesamis, Executive Director Ma. Anthonette Velasco-Allones, and Deputy Executive Director Arturo M. Lachica.

[3] *Rollo*, pp. 53-70; Decision No. 110067 dated 15 February 2011 penned by Commissioner Mary Ann Z. Fernandez-Mendoza and concurred in by Commissioner Francisco T. Duque III.

[4] *Id*. at 71-75; Resolution No. 1100719 dated 1 June 2011 penned by Commissioner Mary Ann Z. Fernandez-Mendoza and concurred in by Commissioners Francisco T. Duque III and Rasol L. Mitmug.

[5] *Id*. at 76-80; Resolution No. 918 dated 12 January 2011.

(DOJ).[6] This document stated, among others, that out of 35 filled positions in the PAO, 33 were occupied by persons without the required CES eligibility.

In response to the report, PAO Deputy Chief Public Attorney Silvestre A. Mosing (Deputy Chief Mosing) sent a letter[7] to CESB Executive Director Maria Anthonette V. Allones. He informed her that the positions of Chief Public Attorney, Deputy Chief Public Attorneys, and Regional Public Attorneys (subject positions) were already permanent in nature pursuant to Section 6[8] of Republic Act No. (R.A.) 9406, which accorded security of tenure to the occupants thereof.

A second letter dated 9 November 2010[9] was sent to the CESB by Deputy Chief Mosing to reiterate its earlier communication. The letter also contained supplementary arguments in support

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[6] *Id*. at 451-452; Memorandum dated 13 September 2010 and attachment.

[7] *Id*. at 84-85; Letter dated 29 September 2010 sent by PAO Deputy Chief Public Attorney Silvestre A. Mosing to CESB Executive Director Maria Anthonette V. Allones.

[8] Section 6 of R.A. 9406 states in relevant part:

SEC. 6. New sections are hereby inserted in Chapter 5, Title III, Book IV of Executive Order No. 292, to read as follows:

"SEC. 16-A. Appointment. - The Chief Public Attorney and the Deputy Chief Public Attorneys shall be appointed by the President. The Deputy Chief Public Attorneys and Regional Public Attorneys shall be appointed by the President upon the recommendation of the Chief Public Attorney. The Chief Public Attorney, Deputy Chief Public Attorneys and Regional Public Attorneys shall not be removed or suspended, except for cause provided by law; *Provided,* That the Deputy Chief Public Attorneys, the Regional Public Attorneys and The Assistant Regional Public Attorneys, the Provincial Public Attorneys, the City Public Attorneys and Municipal District Public Attorney shall preferably have served as Public Attorneys for at least five (5) years immediately prior to their appointment as such. The administrative and support personnel and other lawyers in the Public Attorney's Office shall be appointed by the Chief Public Attorney, in accordance with civil service laws, rules, and regulations."

[9] *Rollo*, pp. 87-88; Letter dated 9 November 2010 sent by PAO Deputy Chief Public Attorney Silvestre A. Mosing to CESB Executive Director Maria Anthonette V. Allones.

of the assertion that the subject positions were permanent posts; hence, their occupants may only be removed for cause provided by law. Based on the foregoing premises, the PAO requested the deletion of its office from the Data on CES Occupancy for the Department of Justice (DOJ).

On 18 November 2010, the PAO received the reply sent to Deputy Chief Mosing by the CESB, through Deputy Executive Director Arturo M. Lachica.[10] The latter informed Deputy Chief Mosing that the CESB would conduct a position classification study on the specified PAO positions to determine whether they may still be considered CES positions in the DOJ.

The DOJ Legal Opinion

While the matter was pending, PAO Deputy Chief Mosing wrote a letter to then DOJ Secretary Leila M. de Lima to inform her about the communications sent by the PAO to the CESB.[11] He also reiterated the PAO's opinion that the subject positions must be considered permanent in nature, and not subject to CES requirements.[12]

In a letter[13] sent to Chief Public Attorney Persida V. Rueda-Acosta on 3 January 2011, Chief State Counsel Ricardo V. Paras III elucidated the legal opinion of the DOJ on the matter:

> Based on the foregoing, your claim that the appointments of the top-level officials of the PAO are permanent is without merit. For one, the positions of the Chief Public Attorney, Deputy Chief Public Attorney and Regional Public Attorneys are part of the CES. xxx
>
> x x x x x x x x x

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[10] *Id*. at 86; Letter dated 10 November 2010 sent by CESB Deputy Executive Director Arturo M. Lachica to PAO Deputy Chief Public Attorney Silvestre A. Mosing.

[11] *Id*. at 90-92; Letter dated 9 November 2010 sent by PAO Deputy Chief Public Attorney Silvestre A. Mosing to DOJ Secretary Leila M. de Lima.

[12] *Id*. at 91.

[13] *Id*. at 93-105; Letter dated 3 January 2011.

Secondly, since the Chief Public Attorney, Deputy Chief Public Attorneys and Regional Public Attorneys are occupying CES positions, it is required by law that they should be CES eligibles to become permanent appointees to the said position. x x x.

x x x x x x x x x

This leads to the inevitable conclusion that the appointments of the Chief Public Attorney, Deputy Chief Public Attorneys and Regional Public Attorneys are not permanent, despite your claims to the contrary, considering that they do not possess the required CES eligibility for the said positions. As such, they cannot invoke their right to security of tenure even if it was expressly guaranteed to them by the PAO Law.

x x x x x x x x x

Considering that the appointments of the Chief Public Attorney, Deputy Chief Public Attorneys and Regional Public Attorneys are temporary, they are required to subsequently take the CES examination. In the absence of any evidence that would show compliance with the said condition, it is presumed that the top-level officials of the PAO are non-CES eligibles; therefore they may be removed from office by the appointing authority without violating their constitutional and statutory rights to security of tenure. [14]

The DOJ also noted that the permanent nature of an appointment does not automatically translate to an exemption from CES coverage, as it is only the CESB that has the authority to exempt certain positions from CES requirements.[15] The DOJ further rejected the claim that the occupants of the subject positions were exercising quasi-judicial functions. It explained that while the lawyers of the PAO regularly conduct mediation, conciliation or arbitration of disputes, their functions do not entail the rendition of judgments or decisions – an essential element of the exercise of quasi-judicial functions.[16]

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[14] *Id.* at 96-101.

[15] *Id.* at 101-102.

[16] *Id.* at 103-105.

The CSC Legal Opinion

It appears that while waiting for the CESB to respond to its letters, the PAO wrote to the CSC to request a legal opinion on the same matter.[17] The PAO thereafter informed the CESB of the former's decision to seek the opinion and requested the latter to issue no further opinion or statement, oral or written, relative to the qualifications of the PAO officials.[18]

On 7 January 2011, the CSC issued the requested legal opinion.[19] Citing its mandate as an independent constitutional commission and its authority under the Administrative Code to "render opinions and rulings on all personnel and other civil service matters," the CSC declared that third-level eligibility is not required for the subject positions in the PAO:

> The law is explicit that the positions [of] Chief Public Attorney, Deputy Chief Public Attorney and Regional Public Attorney in PAO shall have the same qualifications for appointment, among other things, as those of the Chief State Prosecutor, Assistant Chief State Prosecutor and Regional State Prosecutor, respectively. These, of course include, the eligibility requirement for these positions. x x x.
>
> x x x x x x x x x
>
> The Prosecution Service Act of 2010 explicitly provides that the Prosecutor General (the retitled position of Chief State Prosecutor) has the same qualifications for appointment, among other things, as those of the Presiding Justice of the Court of Appeals (CA). Further, the Senior Deputy State Prosecutor and the Regional Prosecutor have the same qualifications as those of an associate justice of the CA. x x x.
>
> x x x x x x x x x
>
> No less than the Constitution provides that justices and judges in the judiciary are required, among other things, practice of law as

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[17] *Id*. at 109-112; *See* letter dated 7 January 2011 re: Appropriate Eligibility for Key Positions in PA (Legal Opinion).

[18] *Id*. at 106-107; Letter dated 10 January 2011 sent by PAO Deputy Chief Public Attorney Silvestre A. Mosing to CESB Executive Director Maria Anthonette V. Allones.

[19] *Supra* note 17.

requirement for appointment thereto. Pointedly, the Presiding Justice and the Associate Justice of the Court of Appeals (CA) have the same qualifications as those provided for in the Constitution for Justices of the Supreme Court[,] which includes, among other requirements, practice of law. This means that the Constitution and the Civil Service Law prescribe RA 1080 (BAR) as the appropriate civil service eligibility therefor. Accordingly, any imposition of a third-level eligibility (e.g. CESE, CSEE) is not proper, if not, illegal under the circumstances. In fact, even in the 1997 Qualification Standards Manual of the Commission, all of these positions require RA 1080 BAR eligibility for purposes of appointment.

x x x x x x x x x

Thus, it is the Commission's opinion that for purposes of permanent appointment to the positions of Chief Public Attorney, Deputy Chief Public Attorney and Regional Public Attorney, no third-level eligibility is required but only RA 1080 (BAR) civil service eligibility.[20]

CESB Resolution No. 918

On 12 January 2011, the CESB issued Resolution No. 918[21] (CESB Resolution No, 918) denying the PAO's request to declassify the subject positions. Citing the Position Classification Study[22] submitted by its secretariat, the CESB noted that the positions in question "require leadership and managerial competence"[23] and were thus part of the CES. Hence, the appointment of persons without third-level eligibility for these posts cannot be considered permanent. The CESB explained:

WHEREAS, pursuant to its mandate to identify positions of equivalent rank as CES positions, the Secretariat revisited its previous classification as part of the CES [of] the above positions of PAO and conducted a position classification of the above positions and arrived at the following findings:

1. The positions of Chief Public Attorney, Deputy Chief Public Attorneys, Regional Public Attorneys and Assistant

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[20] *Id*. at 110-112.

[21] Resolution No. 918, *supra* note 5.

[22] Agenda Item No. IV-8; *rollo*, pp. 113-116.

[23] *Id.* at 114.

Regional Public Attorneys who are all presidential appointees fall within the criteria set under CESB Resolution No. 299, s. 2009, namely:

a. The position is a career position;
b. The position is above division chief level;
c. The duties and responsibilities of the position require the performance of executive or managerial functions.

2. While Section 3 of Republic Act 9406 which provides that:

SEC. 3. A new Section 14-A, is hereby inserted in Chapter 5, Title III, Book IV of Executive Order No. 292, otherwise known as the "Administrative Code of 1987", to read as follows:

"SEC. 14-A *Powers and Functions*. - The PAO shall independently discharge its mandate to render, free of charge, legal representation, assistance, and counselling to indigent persons in criminal, civil, labor, administrative and other quasi-judicial cases. In the exigency of the service, the PAO may be called upon by proper government authorities to render such service to other persons, subject to existing laws, rules and regulations."

The aforecited provision does not limit the mandate of PAO to perform only non-executive functions. All that the aforecited provision states is that the PAO is mandated to render legal representation, assistance and counseling to indigent persons in criminal, civil, labor, administrative and other quasi-judicial cases, free of charge. Notably, the positions of Chief Public Attorney, Deputy Chief Public Attorney, Regional Public Attorneys and Assistant Regional Public Attorneys evidently require leadership and managerial competence.

x x x x x x x x x

WHEREAS, it is undisputed that the subject positions are CES in nature and as such, the eligibility requirement for appointment thereto is CES eligibility.

With regard to the question of its jurisdiction over the matter as against that of the CSC, the CESB stated:

WHEREAS, under Section 8, Chapter 2, Book V of EO 292, it is the Board which has the mandate over Third-level positions in the Career

Service and not the CSC. Section 8, Chapter 2, Book V of EO 292 provides:

> Section 8. Classes of Positions in the Civil Service. – (1) Classes of positions in the career service, appointment to which requires examinations shall be grouped into three major levels as follows:
>
> x x x x x x x x x
>
> (c) The third-level shall cover positions in the Career Executive Service.
>
> (2) x x x Entrance to the third-level shall be prescribed by the Career Executive Service Board.

WHEREAS, in the case of De Jesus v. People, G.R. No. 61998, February 22, 1983, 120 SCRA 760, the Supreme Court ruled that "where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus conflict with the special act, the special must prevail since it evinces the legislative intent more clearly than that of a general statute and must be taken as intended to constitute an exception to the general act."

WHEREAS, following the above-cited rule, it is clear that Section 8, Chapter 2, Book V of EO 292 is the exception to [the] general act pertaining to the authority of the CSC;

x x x x x x x x x

WHEREAS, it is clear that the mandate of the Board is in accordance with existing laws and pertinent jurisprudence on matters pertaining to the CES[.][24]

Aggrieved by the CESB Resolution, the PAO filed a Verified Notice of Appeal[25] and an Urgent Notice of Appeal[26] with the CSC.

PROCEEDINGS BEFORE THE CSC

Before the CSC, the PAO assailed CESB Resolution No. 918 on the following grounds: (a) the resolution was rendered

[24] *Supra* note 5, at 77-79.

[25] *Rollo*, pp. 386-387; Urgent Notice of Appeal dated 14 January 2011.

[26] *Id*. at 389-412; Urgent Memorandum on Appeal dated 14 January 2011.

contrary to R.A. 9406 in relation to R.A. 10071,[27] the 1987 Constitution and the CSC letter-opinion; and (b) the CESB usurped the legislative function of Congress when the former required additional qualifications for appointment to certain PAO positions. The PAO likewise asserted that its appeal had been brought to the CSC, because the latter had the power to review decisions and actions of one of its attached agencies – the CESB.

In an Order[28] dated 17 January 2011, the CSC directed the CESB to comment on the appeal.

Instead of submitting a comment, however, the CESB filed a Motion for Clarification[29] to assail the authority of the CSC to review its Decision. It asserted that the CSC had no jurisdiction to decide the appeal given that (a) the appeal involved a controversy between two government entities regarding questions of law;[30] and (b) the CESB was an autonomous agency whose actions were appealable to the Office of the President.[31] In addition, the CESB emphasized the inability of the CSC to render an unbiased ruling on the case, considering the latter's previous legal opinion on the appropriate eligibility for key positions in the PAO.[32]

In a Decision[33] dated 15 February 2011, the CSC granted the appeal and reversed CESB Resolution No. 918.

As a preliminary matter, the CSC ruled that it could assume jurisdiction over the appeal, which involved the employment status and qualification standards of employees belonging to

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[27] An Act Strengthening and Rationalizing the National Prosecution Service (2010).

[28] *Rollo*, p. 117; Order dated 17 January 2011.

[29] *Id*. at 118-131; Motion for Clarification dated 25 January 2011.

[30] *Id.* at 118-120.

[31] *Id*. at 120-122.

[32] *Id.* at 126-128.

[33] Decision No. 110067, *supra* note 3.

the civil service. It was supposedly a matter falling within its broad and plenary authority under the Constitution and the Administrative Code. The CSC also declared that the authority of the CESB over third-level employees was limited to the imposition of entry requirements and "should not be interpreted as cutting off the reach of the Commission over this particular class of positions."[34] Moreover, the CESB was declared subject to the revisory power of the CSC, given that an attached office is not entirely and totally insulated from its mother agency.[35] With respect to the provision in the Integrated Reorganization Plan[36] on appeals from the CESB to the Office of the President, the CSC construed this requirement as pertaining only to disciplinary proceedings.[37]

On the merits, the CSC ruled in favor of the PAO officials. It declared that the CESB would be in violation of R.A. 9406 if the latter would require an additional qualification – in this case, third-level eligibility – for purposes of permanent appointments to certain PAO positions:

> The foregoing elaboration shows the qualifications of the subject PAO positions under the existing laws. It is gleaned that nowhere in these laws is there a reference to third-level eligibility and CESO rank as qualification requirements for attaining tenurial security. All that the laws uniformly prescribe for the positions in question is practice of law for certain period of time, which presupposes a bar license. This being the case, the CESB cannot, in the guise of enforcing and administering the policies of the third-level, validly impose qualifications in addition to what the laws prescribe. It cannot add another layer of qualification requirement which is not otherwise specified in the statutes. As an administrative agency, the CESB can only promulgate rules and regulations which must be consistent with and in harmony with the provisions of the laws, and it cannot add or subtract thereto. Most evidently, therefore, in promulgating the

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[34] *Id*. at 65.

[35] *Id*. at 66.

[36] Implementing Presidential Decree No. 1.

[37] *Supra* note 3, at 66.

assailed resolution, which sets out additional qualifications for the subject positions in the PAO, the CESB has overstepped the bounds of its authority. x x x.

In so saying, the Commission does not lose sight of the power of the CESB to identify other positions equivalent to those enumerated in the Administrative Code of 1987 as being part of the third-level or CES for as long as they come within the ambit of the appointing prerogative of the President. Yet, such grant of authority is derived from a general law (the Administrative Code) and hence, it must be deemed circumscribed or qualified by the special law governing the PAO. Reiteratively, the PAO Law, in conjunction with other laws, merely fixes practice of law as the principal qualification requirement for the positions of Acosta, et al.

WHEREFORE, foregoing premises considered, the instant appeal is hereby GRANTED. Accordingly, the CESB Resolution No. 918 dated Jnaury 12, 2011 is REVERSED and SET ASIDE for not being in conformity with law and jurisprudence. It is declared that the following key positions in the Public Attorney's Office do not require third-level eligibility and CESO rank for purposes of tenurial security:

1. Chief Public Attorney;
2. Deputy Chief Public Attorneys;
3. Regional Public Attorneys; and
4. Assistant Regional Public Attorneys.[38]

The CESB sought reconsideration of the Decision, but its motion was denied.[39]

PROCEEDINGS BEFORE THIS COURT

On 9 August 2011, the CESB filed the instant Petition[40] imputing grave abuse of discretion to respondent CSC. It asserts that (a) the CSC has no jurisdiction to review the Resolution of the CESB, given the latter's autonomy as an attached agency; (b) CESB Resolution No. 918 should have been appealed to the Office of the President, and not to the CSC, in accordance

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[38] *Supra* note 3 at 68-70.

[39] Resolution No. 11-00719, *supra* note 4.

[40] Petition for *Certiorari* dated 8 August 2011, *supra* note 1.

with Article IV, Part III of the Integrated Reorganization Plan. The subject PAO positions are supposedly part of the CES, based on criteria established by the CESB.[41] These criteria were set pursuant to the latter's power to identify positions belonging to the third-level of the civil service and to prescribe the requirements for entry thereto. The Petition further reiterates the alleged inability of the CSC to decide the case with impartiality.

In its Comment,[42] the CSC contends that the Petition filed by the CESB before this Court should be dismissed outright for being an improper remedy and for violating the hierarchy of courts. The CSC further asserts its jurisdiction over the PAO's appeal from the CESB Resolution in this case. Citing its mandate as the central personnel agency of the government based on the 1987 Constitution and the Administrative Code, the CSC insists that it has broad authority to administer and enforce the constitutional and statutory provisions on the merit system for all levels and ranks of the civil service. This authority allegedly encompasses the power to review and revise the decisions and actions of offices attached to it, such as the CESB. It also claims that the present dispute involves a personnel action that is within its jurisdiction.

Respondents PAO and its officials have also filed their own Comment[43] on the Petition. They assert that (a) the Petition should be dismissed outright as it is tainted with serious procedural and jurisdictional flaws; (b) the CSC properly exercised its jurisdiction when it resolved the appeal in this case; and (c) CESB Resolution No. 918 contravened R.A. 9406 in relation to the 1987 Constitution, R.A. 10071 and the CSC letter-opinion dated 7 January 2011.

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[41] *See* CESB Resolution No. 799, *Omnibus Policy on the Coverage of the Career Executive Service*, 18 May 2009.

[42] *Rollo*, pp. 572-588; Comment filed on 14 December 2011.

[43] *Id*. at 256-341; Comment on the Petition for *Certiorari* dated 22 November 2011.

Because the instant case involves the contradictory views of two government offices, the Court likewise required the Office of the Solicitor General (OSG) to comment on the matter as the lawyer of the government tasked to uphold the best interest of the latter.

On 28 February 2012, the OSG filed the required Comment.[44] On the issue of jurisdiction, it supports the view of the CSC and the PAO. It cites the Constitution and the Administrative Code as the sources of the authority of the CSC to review rulings of the CESB, particularly with regard to personnel matters such as the reclassification of positions.

As to the merits of the case, the OSG asserts that the subject positions in the PAO should be declassified from the CES. It points out that the primary function of these PAO officials – the provision of legal assistance to the indigent – is specialized in nature; in contrast, their managerial functions are merely incidental to their role. The OSG further contends that the manifest intent of the law is to require PAO officials to have the same qualifications as their counterparts in the National Prosecution Service (NPS). Consequently, the OSG argued that the decision of the CESB to declassify certain posts in the NPS should have likewise resulted in the declassification of the corresponding positions in the PAO.

In its Reply to the Comment of the OSG,[45] the CESB urges the Court to adhere to the alleged limitations on the general authority of the CSC over all matters concerning the civil service. In particular, the CESB asserts its specific and exclusive mandate to administer all matters pertaining to the third-level of the career service. Included in these matters is the power to promulgate rules, standards and procedures for the selection, classification, compensation and career development of its members. Moreover, the CESB insists that it is an agency within the Executive Department under the Integrated Reorganization

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[44] *Id*. at 626-680; Comment dated 13 February 2012.

[45] *Id*. at Reply to the Comment of the Office of the Solicitor filed on 29 May 2012; *rollo*, pp. 688-748.

Plan; hence, its decisions are appealable only to the Office of the President. Lastly, the CESB maintains that the subject positions properly belong to the CES, considering that executive and managerial functions must be exercised by the occupants thereof.

ISSUES

The following issues are presented for resolution:

(1) Whether a petition for certiorari and prohibition was the proper remedy to question the assailed CSC Decision and Resolution

(2) Whether the CSC had the jurisdiction to resolve the appeal filed by the PAO and to reverse CESB Resolution No. 918

(3) Whether the CSC acted in accordance with law when it reversed the CESB and declared that third-level eligibility is not required for occupants of the subject PAO positions

OUR RULING

We **DENY** the Petition.

At the outset, we note that the CESB availed itself of an improper remedy to challenge the ruling of the CSC. In any event, after a judicious consideration of the case, we find that the CSC acted within its jurisdiction when it resolved the PAO's appeal and reversed CESB Resolution No. 918. The CSC also correctly ruled that third-level eligibility is not required for the subject positions.

A petition for certiorari and prohibition is not the appropriate remedy to challenge the ruling of the CSC.

As a preliminary matter, this Court must address the objections of respondents to the remedy availed of by the CESB to question the ruling of the CSC.

Respondents contend that the Petition for Certiorari and Prohibition filed by the CESB before this Court was improper, because the remedy of appeal was available via a petition for review under Rule 43. On the other hand, the CESB insists that a Rule 65 petition is proper, because it is disputing the authority and jurisdiction of the CSC.

We find in favor of respondents.

It is settled that a resort to the extraordinary remedies of *certiorari* and prohibition is proper only in cases where (a) a tribunal, a board or an officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (b) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. Rule 65 of the Rules of Civil Procedure requires the concurrence of both these requisites:

Section 1. *Petition for certiorari*. — **When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law,** a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

Section 2. *Petition for prohibition*. — **When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in**

the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (Emphasis supplied)

In this case, the second requirement is plainly absent. As respondents correctly observed, there was an appeal available to the CESB in the form of a petition for review under Rule 43 of the Rules of Civil Procedure. Section 1 of Rule 43 specifically provides for appeals from decisions of the CSC:

Section 1. Scope. — **This Rule shall apply to appeals** from judgments or final orders of the Court of Tax Appeals and **from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions.** Among these agencies are the **Civil Service Commission,** Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Invention Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

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Section 5. *How appeal taken*. — **Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals,** with proof of service of a copy thereof on the adverse party and on the court or agency *a quo*. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner.

Upon the filing of the petition, the petitioner shall pay to the clerk of court of the Court of Appeals the docketing and other lawful fees and deposit the sum of ₱500.00 for costs. Exemption from payment of docketing and other lawful fees and the deposit for costs may be granted by the Court of Appeals upon a verified motion setting forth valid grounds therefor. If the Court of Appeals denies the motion, the petitioner shall pay the docketing and other lawful fees and deposit for costs within fifteen (15) days from notice of the denial. (Emphasis supplied)

In an attempt to justify its resort to *certiorari* and prohibition under Rule 65, the CESB asserts that the allegations in its Petition – the patent illegality of the assailed Decision and Resolution of the CSC, as well as the lack of jurisdiction and the grave abuse of discretion attending the latter's ruling – are not suitable for an appeal under Rule 43. It argues that since these grounds properly pertain to a petition for certiorari and prohibition, this remedy is more appropriate.

We find the CESB's contention untenable. As previously stated, *certiorari* and prohibition are proper only if both requirements are present, that is, if the appropriate grounds are invoked; **and** an appeal or any plain, speedy, and adequate remedy is unavailable. Mere reference to a ground under Rule 65 is not sufficient. This Court has, in fact, dismissed a Petition for Certiorari assailing another CSC Resolution precisely on this ground. In *Mahinay v. Court of Appeals*,[46] the Court ruled:

As provided by Rule 43 of the Rules of Court, the proper mode of appeal from the decision of a quasi-judicial agency, like the CSC, is a petition for review filed with the CA.

The special civil action of *certiorari* under Rule 65 of the Rules of Court may be resorted to only when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its/his jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction, ***and*** there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.

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[46] 576 Phil. 170, 177-178 (2008).

In this case, petitioner clearly had the remedy of appeal provided by Rule 43 of the Rules of Court. *Madrigal Transport, Inc. v. Lapanday Holdings Corporation* held:

> Where appeal is available to the aggrieved party, the action for *certiorari* will not be entertained. Remedies of appeal (including petitions for review) and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. **One of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.** (Emphasis and underscoring supplied)

Here, the CESB could have appealed the CSC Decision and Resolution to the CA via a petition for review under Rule 43. Hence, the filing of the instant Petition for Certiorari and Prohibition is improper regardless of the grounds invoked therein.

Moreover, we find no reason to allow the CESB to avail itself of the extraordinary remedies of certiorari and prohibition. Indeed, the petition itself cites no exceptional circumstance[47] other than the supposed transcendental importance of the issues raised, "as the assailed CSC Decision is gravely prejudicial to the mandate of the Petitioner." Even when confronted by respondents with regard to the availability of an appeal, the CESB still failed to cite any special justification for its refusal to avail itself of an appeal. Instead, it opted to focus on the

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[47] In *Artistica Ceramica v. Ciudad del Carmen Homeowner's Association, Inc.,* 635 Phil. 21, 33 (2010) citing *Jan-Dec Construction Corp. v. Court of Appeals*, 517 Phil. 96 (2006), the Court enumerated the instances when *certiorari* may be resorted to despite the availability of an appeal:

> While there are instances where the extraordinary remedy of *certiorari* may be resorted to despite the availability of an appeal, the long line of decisions denying the special civil action for *certiorari*, either before appeal was availed of or in instances where the appeal period had lapsed, far outnumbers the instances where *certiorari* was given due course. The few significant exceptions are: (a) when public welfare and the advancement of public policy dictate; (b) when the broader interests of justice so require; (c) when the writs issued are null; and (d) when the questioned order amounts to an oppressive exercise of judicial authority.

nature of the grounds asserted in its Petition. For the reasons stated above, a mere reference to grave abuse of discretion cannot justify a resort to a petition under Rule 65.

Considering the failure of the CESB to offer a compelling explanation for its insistence upon the special remedies of *certiorari* and prohibition, the Court finds no justification for a liberal application of the rules.

In any event, the contentions of the CESB are without merit. As will be further explained, we find no grave abuse of discretion on the part of the CSC. In resolving the appeal filed by the PAO, the CSC merely exercised the authority granted to it by the Constitution as the central personnel agency of the government.

The CSC acted within its jurisdiction when it resolved the PAO's appeal and reversed CESB Resolution No. 918.

At its core, this case requires the Court to delineate the respective authorities granted by law to two agencies involved in the management of government personnel – the CSC and the CESB. This particular dispute involves not only the jurisdiction of each office over personnel belonging to the third-level of the civil service, but also the relationship between the two offices.

On the one hand, the CESB asserts its jurisdiction over members of the CES. Specifically, it refers to the identification and classification of positions belonging to the third-level, as well as the establishment of the qualifications for appointment to those posts. The CESB further emphasizes its autonomy from the CSC on the basis of this Court's ruling that its status as an attached agency only pertains to policy and program coordination.

The CSC, on the other hand, defends its authority to review actions and decisions of its attached agencies, including the CESB. The CSC further claims original and appellate jurisdiction over administrative cases involving contested appointments, pursuant to its constitutional mandate as the central personnel agency of the government.

In the interest of the effective and efficient organization of the civil service, this Court must ensure that the respective powers and functions of the CSC and the CESB are well-defined. After analyzing and harmonizing the legal provisions pertaining to each of these two agencies, the Court concludes that the CSC has the authority to review CESB Resolution No. 918. We have arrived at this conclusion after a consideration of (a) the broad mandate of the CSC under the Constitution and the Administrative Code; and (b) the specific and narrowly tailored powers granted to the CESB in the Integrated Reorganization Plan and the Administrative Code.

As the central personnel agency of the government, the CSC has broad authority to pass upon all civil service matters.

Article IX-B of the 1987 Constitution entrusts to the CSC[48] the administration of the civil service, which is comprised of "all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters."[49] In particular, Section 3 of Article IX-B provides for the mandate of this independent constitutional commission:

> SECTION 3. The Civil Service Commission, as the **central personnel agency of the Government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service**. It shall **strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability.** It shall submit to the President and the Congress an annual report on its personnel programs. (Emphases supplied)

The proceedings of the 1986 Constitutional Commission reveal the intention to emphasize the status of the CSC as the "central personnel agency of the Government with all powers and

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[48] *Id*., Section 1(1).

[49] 1987 CONSTITUTION, Article IX-B, Section 2(1).

functions inherent in and incidental to human resources management."[50] As a matter of fact, the original proposed provision on the functions of the CSC reads:

> Sec. 3. The **Civil Service Commission, as the central personnel agency of the government, shall establish a career service, promulgate and enforce policies on personnel actions, classif[y] positions, prescribe conditions of employment** except as to compensation and other monetary benefits which shall be provided by law, and **exercise all powers and functions inherent in and incidental to human resources management,** to promote morale, efficiency, and integrity in the Civil Service. It shall submit to the President and the Congress an annual report on its personnel programs, and perform such other functions as may be provided by law.[51] (Emphases supplied)

Although the specific powers of the CSC are not enumerated in the final version of 1987 Constitution,[52] it is evident from the deliberations of the framers that the concept of a "central personnel agency" was considered all-encompassing. The concept was understood to be sufficiently broad as to include the authority to promulgate and enforce policies on personnel actions, to classify positions, and to exercise all powers and functions inherent in and incidental to human resources management:

> MR. FOZ. Will the amendment reduce the powers and functions of the Civil Service as embodied in our original draft?

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[50] I RECORD, CONSTITUTIONAL COMMISSION 525 (14 July 1986).

[51] Proposed Resolution No. 468, I RECORD, CONSTITUTIONAL COMMISSION 524 (14 July 1986).

[52] Article IX-B, Section 3 of the 1987 Constitution states:

> SECTION 3. The Civil Service Commission, as the central personnel agency of the Government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. It shall strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability. It shall submit to the President and the Congress an annual report on its personnel programs.

MS. AQUINO: No, it will not. **The proposed deletion of lines 35 to 40 of page 2 until line 1 of page 3 would not in any way minimize the powers of the Civil Service [Commission] because they are deemed implicitly included in the all-embracing definition and concept of "central personnel agency of the government."** I believe that the lines we have mentioned are but redundant articulation of that same concept, unnecessary surplusage.

MR. FOZ. For instance, will the power or function to promulgate policies on personnel actions be encompassed by the Commissioner's amendment?

MS. AQUINO. It is not an amendment because I am retaining lines 33 to 35. I proposed an amendment after the words "career service." I am only doing away with unnecessary redundancy.

MR. FOZ. **Can we say that all of the powers enumerated in the original provision are still being granted by the Civil Service Commission despite the elimination of the listing of these powers and functions?**

MS. AQUINO. **Yes, Mr. Presiding Officer, in the nature of a central personnel agency, it would have to necessarily execute all of these functions.**

MR. FOZ. And will the elimination of all these specific functions be a source of ambiguity and controversies later on as to the extent of the powers and functions of the commission?

MS. AQUINO. I submit that this would not be susceptible of ambiguity because the concept of a central personnel agency is a generally accepted concept and as experience would bear out, this function is actually being carried out already by the Civil Service Commission, except that we are integrating this concept. I do not think that it would be susceptible of any ambiguity.

MR. REGALADO. Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Treñas). Yes, Commissioner Regalado is recognized.

MR. REGALADO. This is more for clarification.

The original Section 3 states, among others, the functions of the Civil Service Commission – to promulgate and enforce policies on personnel actions. Will Commissioner Aquino kindly indicate

to us the corresponding provisions and her proposed amendment which would encompass the powers to promulgate and enforce policies on personnel actions?

MS. AQUINO. It is my submission that the same functions are already subsumed under the concept of a central personnel agency.

MR. REGALADO. In other words, **all those functions enumerated** from line 35 on page 2 to line 1 of page 3 inclusive, **are understood to be encompassed in the phrase "central personnel agency of the government."**

MS. AQUINO. Yes, Mr. Presiding Officer, except that on line 40 of page 2 and line 1 of the subsequent page, it was only subjected to a little modification.

MR. REGALADO. May we, therefore, make it of record that the phrase "… **promulgate and enforce policies on personnel actions, classify positions, prescribe conditions of employment except as to compensation and other monetary benefits which shall be provided by law" is understood to be subsumed under and included in the concept of a central personnel agency.**

MS. AQUINO. I would have no objection to that.[53] (Emphases and underscoring supplied)

In accordance with the foregoing deliberations, the mandate of the CSC should therefore be read as the comprehensive authority to perform all functions necessary to ensure the efficient administration of the *entire* civil service, including the CES.

The Administrative Code of 1987 further reinforces this view. Book V, Title I, Subtitle A, Chapter 3, Section 12 thereof enumerates the specific powers and functions of the CSC while recognizing its comprehensive authority over all civil service matters. Section 12, Items (1) to (5), (11), (14), and (19), are of particular relevance to this dispute:

SECTION 12. Powers and Functions.—The Commission shall have the following powers and functions:

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[53] I RECORD, CONSTITUTIONAL COMMISSION 592-593 (July 15, 1986).

(1) Administer and enforce the constitutional and statutory provisions on the merit system for all levels and ranks in the Civil Service;

(2) Prescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws;

(3) Promulgate policies, standards and guidelines for the Civil Service and adopt plans and programs to promote economical, efficient and effective personnel administration in the government;

(4) Formulate policies and regulations for the administration, maintenance and implementation of position classification and compensation and set standards for the establishment, allocation and reallocation of pay scales, classes and positions;

(5) Render opinion and rulings on all personnel and other Civil Service matters which shall be binding on all heads of departments, offices and agencies and which may be brought to the Supreme Court on certiorari;

x x x x x x x x x

(11) Hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decisions and actions of its offices and of the agencies attached to it. Officials and employees who fail to comply with such decisions, orders, or rulings shall be liable for contempt of the Commission. Its decisions, orders, or rulings shall be final and executory. Such decisions, orders, or rulings may be brought to the Supreme Court on certiorari by the aggrieved party within thirty (30) days from receipt of a copy thereof;

x x x x x x x x x

(14) Take appropriate action on all appointments and other personnel matters in the Civil Service including extension of Service beyond retirement age;

x x x x x x x x x

(19) Perform all functions properly belonging to a central personnel agency and such other functions as may be provided by law.

It is evident from the foregoing constitutional and statutory provisions that the CSC, as the central personnel agency of the

government, has been granted the broad authority and the specific powers to pass upon all civil service matters. The question before the Court today is whether this broad authority encompasses matters pertaining to the CES and are, as such, recognized to be within the jurisdiction of the CESB.

To allow us to understand the legal framework governing the two agencies and to harmonize the provisions of law, it is now necessary for the Court to examine the history and the mandate of the CESB. It may thereby determine the proper relation between the CSC and the CESB.

The CESB has been granted specific and limited powers under the law.

On 9 September 1968, Congress enacted R.A. 5435 authorizing the President to reorganize different executive departments, bureaus, offices, agencies, and instrumentalities of the government. The statute also created a Commission on Reorganization with the mandate to study and investigate the status of all offices in the executive branch. This commission was also tasked to submit an integrated reorganization plan to the President, and later on to Congress, for approval. The Commission was given until 31 December 1970 to present its plan to the President.[54]

After the conduct of hearings and intensive studies, a proposed Integrated Reorganization Plan[55] was submitted to then President Ferdinand E. Marcos on 31 December 1970. The plan included a proposal to develop a professionalized and competent civil service through the establishment of the CES – a group of senior administrators carefully selected for managerial posts in the higher levels.[56] To promulgate standards for the CES, the Commission on Reorganization recommended the creation of the CESB:

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[54] *See* Section 4 of R.A. 5435 as amended by R.A. 6076 and 6172.

[55] Integrated Reorganization Plan (1972).

[56] Reorganization of the Executive Branch of the National Government: Summary Justifications and Supporting Tables (1972), p. III-3.

To promulgate standards, rules and procedures regarding the selection, classification, compensation and career development of members of the Career Executive Service, a Board is proposed to be established. The Board shall be composed of high-level officials to provide a government-wide view and to ensure effective support for the establishment and development of a corps of highly competent, professional administrators.[57]

The plan was referred to a presidential commission for review, but Martial Law was declared before the proposal could be acted upon. Four days after the declaration of Martial Law, however, the Integrated Reorganization Plan was approved by former President Marcos through Presidential Decree No. 1.[58] This approved plan included the creation of the CES and the CESB.

The CES was created to "form a continuing pool of well-selected and development-oriented career administrators who shall provide competent and faithful service."[59] The CESB was likewise established to serve as the governing body of the CES[60] with the following functions: (a) to promulgate rules, standards and procedures for the selection, classification, compensation and career development of members of the CES;[61] (b) to set up the organization and operation of the civil service in accordance with the guidelines provided in the plan;[62] (c) to prepare a program of training and career development for members of the CES;[63]

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[57] Reorganization of the Executive Branch of the National Government: Summary Justifications and Supporting Tables (1972), p. III-4.

[58] Presidential Decree No. 1, Reorganizing the Executive Branch of the National Government (24 September 1972).

[59] Integrated Reorganization Plan, Part III, Chapter I, Article IV (1).

[60] *Id*., Article IV(2).

[61] *Id*., Article IV(5).

[62] *Id*.

[63] *Id*., Article IV 5(g).

(d) to investigate and adjudicate administrative complaints against members of the CES.[64]

When the Administrative Code was enacted in 1987, the CESB was given the additional authority to (a) identify other officers belonging to the CES in keeping with the conditions imposed by law;[65] and (b) prescribe requirements for entrance to the third-level.[66]

Based on the foregoing provisions, it is clear that the powers granted to the CESB are specific and limited. This Court must now determine whether it is possible to interpret these powers in harmony with the broad constitutional mandate of the CSC.

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[64] *Id*., Article IV 5(h).

[65] Administrative Code of 1987, Book V, Title I, Subtitle A, Chapter 2, Section 7, states in relevant part:

> SECTION 7. Career Service. — The Career Service shall be characterized by (1) entrance based on merit and fitness to be determined as far as practicable by competitive examination, or based on highly technical qualifications; (2) opportunity for advancement to higher career positions; and (3) security of tenure.
>
> The Career Service shall include:
>
> x x x x x x x x x
>
> (3) Positions in the Career Executive Service; namely, Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President;

[66] *Id*., Section 8, states:

> SECTION 8. Classes of Positions in the Career Service. — (1) Classes of positions in the career service appointment to which requires examinations shall be grouped into three major levels as follows:
>
> x x x x x x x x x
>
> (c) The third-level shall cover positions in the Career Executive Service.
>
> (2) Except as herein otherwise provided, entrance to the first two levels shall be through competitive examinations, which shall be open to those inside and outside the service who meet the minimum qualification requirements. Entrance to a higher level does not require previous qualification in the lower level. Entrance to the third-level shall be prescribed by the Career Executive Service Board.

The specific powers of the CESB must be narrowly interpreted as exceptions to the comprehensive authority granted to the CSC by the Constitution and relevant statutes.

As we have earlier observed, the interplay between the broad mandate of the CSC and the specific authority granted to the CESB is at the root of this controversy. The question we must resolve, in particular, is whether the CSC had the authority to review and ultimately reverse CESB Resolution No. 918, upon the appeal of the PAO.

For its part, the CESB contends that the Integrated Reorganization Plan and the Administrative Code have granted it the exclusive authority to identify the positions belonging to the third-level of the civil service and to prescribe the eligibility requirements for appointments thereto.[67] It thus asserts that the foregoing matters are beyond the revisory jurisdiction of the CSC, and must instead be appealed to the Office of the President in accordance with the specific provisions of the aforementioned laws. This special mandate must allegedly prevail over the general authority granted to the CSC.

As to its status as an attached agency, the CESB cites this Court's pronouncement in *Eugenio v. CSC*[68] on its autonomy from its mother agency. The CESB contends that its attachment to the CSC is only for the purpose of "policy and program coordination."[69] Allegedly, this attachment does not mean that the former's decisions, particularly CESB Resolution No. 918, are subject to the CSC's review.

On the other hand, the CSC asserts its jurisdiction to act upon the appeal from CESB Resolution No. 918 by virtue of its status as the central personnel agency of the government. It contends that the CESB's authority to prescribe entrance requirements for the third-level of the civil service does not

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[67] Petition, *supra* note 1, at 27-28, 34-35.

[68] 312 Phil. 1145 (1995).

[69] Petition, *supra* note 1, at 21.

mean that the CSC no longer has jurisdiction over that class of positions. It also points out that the case involves a personnel action that is within the jurisdiction conferred upon it by law.

We uphold the position of the CSC.

It is a basic principle in statutory construction that statutes must be interpreted in harmony with the Constitution and other laws.[70] In this case, the specific powers of the CESB over members of the CES must be interpreted in a manner that takes into account the comprehensive mandate of the CSC under the Constitution and other statutes.

The present case involves the classification of positions belonging to the CES and the qualifications for these posts. These are matters clearly within the scope of the powers granted to the CESB under the Administrative Code and the Integrated Reorganization Plan. However, this fact alone does not push the matter beyond the reach of the CSC.

As previously discussed, the CSC, as the central personnel agency of the government, is given the comprehensive mandate to administer the civil service under Article IX-B, Section 3 of the 1987 Constitution; and Section 12, Items (4), (5), and (14) of the Administrative Code. It has also been expressly granted the power to promulgate policies, standards, and guidelines for the civil service; and to render opinions and rulings on all personnel and other civil service matters.[71]

Here, the question of whether the subject PAO positions belong to the CES is clearly a civil service matter falling within the comprehensive jurisdiction of the CSC. Further, considering the repercussions of the issue concerning the appointments of those occupying the posts in question, the jurisdiction of the CSC over personnel actions is implicated.

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[70] See *Resident Marine Mammals of the Protected Seascape Tañon Strait v. Reyes*, G.R. Nos. 180771 & 181527, 21 April 2015, 756 SCRA 513, citing *Pangandaman v. Commission on Elections*, 377 Phil. 297 (1999).

[71] Administrative Code of 1987, Book V, Title I, Subtitle A, Chapter 3, Section 12(3), (5).

It must likewise be emphasized that the CSC has been granted the authority to review the decisions of agencies attached to it under Section 12(11), Chapter 3, Subtitle A, Title I, Book V of the Administrative Code:

SECTION 12. Powers and Functions.—The Commission shall have the following powers and functions:

(11) Hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decisions and actions of its offices and of the agencies attached to it. Officials and employees who fail to comply with such decisions, orders, or rulings shall be liable for contempt of the Commission. Its decisions, orders, or rulings shall be final and executory. Such decisions, orders, or rulings may be brought to the Supreme Court on certiorari by the aggrieved party within thirty (30) days from receipt of a copy thereof;

Since the CESB is an attached agency of the CSC,[72] the former's decisions are *expressly* subject to the CSC's review on appeal.

Against the express mandate given to the CSC in the foregoing provision, the contention of the CESB that its decisions may only be appealed to the Office of the President must fail. We note that the supporting provision[73] cited by the CESB in support of its argument refers only to administrative cases involving the *discipline* of members of the CES:

5. The Board shall promulgate rules, standards and procedures on the selection, classification, compensation and career development of members of the Career Executive Service. The Board shall set up the organization and operation of the Service in accordance with the following guidelines:

x x x x x x x x x

h. ***Discipline.*** Investigation and adjudication of administrative complaints against members of the Career Executive Service shall be governed by Article VI,

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[72] See *Eugenio v. Civil Service Commission*, *supra* note 68.

[73] Integrated Reorganization Plan, Article IV(5).

> Chapter II and Paragraph 1 (d) of Article II, Chapter III of this Part; provided that appeals shall be made to the Career Executive Service Board instead of the Civil Service Commission. **Administrative cases involving members of the Service on assignment with the Board shall be investigated and adjudicated by the Board with the right to appeal to the Office of the President.** (Emphasis supplied)

In our view, the foregoing rule on appeals to the Office of the President only covers *disciplinary cases* involving members of the CES. It is evident that this special rule was created for that particular type of case, because members of the CES are all presidential appointees. Given that the power to appoint generally carries with it the power to discipline,[74] it is only reasonable for the president to be given the ultimate authority to discipline presidential appointees. But this special rule cannot apply to the matter at hand, because CESB Resolution No. 918 did not involve a disciplinary case. Since it was clearly outside the scope of the foregoing provision, the Resolution did not come within the jurisdiction of the Office of the President. It was therefore correctly appealed to the CSC.

From the above discussion, it is evident that the CSC acted within its jurisdiction when it resolved the PAO's appeal. The arguments of the CESB on this point must perforce be rejected.

The CSC correctly ruled that third level eligibility is <u>not</u> required for the subject positions.

The Court now comes to the final issue for resolution – whether the CSC ruled in accordance with law when the latter declared that it was not necessary for occupants of the subject PAO posts to possess third-level eligibility.

On this point, the CESB argues that third-level eligibility is required for the positions pursuant to R.A. 9406 in relation to R.A. 10071. It avers that R.A. 9406 requires the Chief Public Attorney, Deputy Chief Public Attorneys, Regional Public

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[74] *Aguirre, Jr. v. De Castro*, 378 Phil. 714 (1999).

Attorneys and Assistant Regional Public Attorneys to have the same qualifications for appointment, rank, salaries, allowances and retirement privileges as the Chief State Prosecutor, Assistant Chief State Prosecutor, Regional State Prosecutor and Assistant Regional State Prosecutor of the NPS under P.D. 1275. The latter law is the old one that governs the NPS and requires third-level eligibility for senior prosecutorial posts. According to the CESB, R.A. 10071 cannot apply, because R.A. 9406 could not have referred to a law that had not yet been enacted at the time. It also asserts that the subsequent declassification of prosecutors cannot benefit members of the PAO, because the prosecutors exercise quasi-judicial functions while the PAO members do not.

On the other hand, the CSC argues that nowhere in R.A. 9406, P.D. 1275, R.A. 10071 or *Batas Pambansa Blg*. (B.P.) 129 is there a reference to third-level eligibility and CESO rank as qualification requirements. It emphasizes that the CESB cannot add to the provisions of these laws, which only require the practice of law for a certain period of time and presuppose a bar license. The PAO, for its part, maintains that the posts concerned are highly technical in nature because they primarily involve legal practice, and any managerial functions performed are merely incidental to their principal roles. It also claims that the legislature could never have intended to require third-level eligibility for occupants of the subject posts when it enacted R.A. 9406.

After a careful consideration of the relevant statutes and rules, this Court agrees with the conclusion of the CSC. To require the occupants of the subject PAO positions to possess third-level eligibility would be to amend the law and defeat its spirit and intent.

The CESB effectively amended the law when it required the occupants of the subject PAO positions to obtain third-level eligibility.

The authority to prescribe qualifications for positions in the government is lodged in Congress[75] as part of its plenary legislative power to create, abolish and modify public offices to meet societal demands.[76] From this authority emanates the right to change the qualifications for existing statutory offices.[77]

It was in the exercise of this power that the legislature enacted Section 5 of R.A. 9406, which provides for the qualifications for the Chief Public Attorney, Deputy Chief Public Attorneys, Regional Public Attorneys and Assistant Regional Public Attorneys:

SEC. 5. Section 16, Chapter 5, Title III, Book IV of Executive Order No. 292, as amended, is hereby further amended to read as follows:

> SEC. 16. The Chief Public Attorney and Other PAO Officials. - The PAO shall be headed by a Chief Public Attorney and shall be assisted by two (2) Deputy Chief Public Attorneys. Each PAO Regional Office established in each of the administrative regions of the country shall be headed by a Regional Public Attorney who shall be assisted by an Assistant Regional Public Attorney. The authority and responsibility for the exercise of the mandate of the PAO and for the discharge of its powers and functions shall be vested in the Chief Public Attorney.
>
> x x x x x x x x x
>
> The **Chief Public Attorney** shall have the **same qualifications for appointment,** rank, salaries, allowances, and retirement privileges as those of the **Chief State Prosecutor of the National Prosecution Service**. The **Deputy Chief Public Attorneys** shall have the **same qualifications for appointment**, rank, salaries, allowances, and retirement privileges as those of the **Assistant Chief State Prosecutor of the National Prosecution Service.**
>
> x x x x x x x x x

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[75] See *Flores v. Drilon*, G.R. No. 104732, 22 June 1993, 223 SCRA 568; *Manalang v. Quitoriano,* 94 Phil. 903 (1954).

[76] *Government of Camarines Norte v. Gonzales*, 714 Phil. 468 (2013).

[77] *Id*.

> The **Regional Public Attorney and the Assistant Regional Public Attorney** shall have the same qualifications for appointment, rank, salaries, allowances, and retirement privileges as those of a **Regional State Prosecutor and the Assistant Regional State Prosecutor** of the National Prosecution Service respectively.

At the time of the enactment of R.A. 9406, the qualifications of officials of the NPS, to which the foregoing provision referred, were provided by Section 3 of P.D. 1275:

Section 3. Prosecution Staff; Organization, Qualifications, Appointment. The Prosecution Staff shall be composed of prosecuting officers in such number as hereinbelow determined. It shall be headed by a Chief State Prosecutor who shall be assisted by three Assistants Chief State Prosecutors.

The **Chief State Prosecutor, the three Assistants Chief State Prosecutors;** and the members of the Prosecution Staff shall be selected from among qualified and professionally trained members of the legal profession who are of proven integrity and competence and have been in the **actual practice of the legal profession for at least five (5) years prior to their appointment or have held during like period, any position requiring the qualifications of a lawyer.** (Emphases supplied)

Soon after, R.A. 10071 or the Prosecution Service Act of 2010[78] was passed. In updating the qualifications for senior positions in the NPS, Congress again opted to refer to another set of positions, this time in the judiciary:

SECTION 14. *Qualifications, Rank and Appointment of the Prosecutor General*. — The Prosecutor General shall have the same qualifications for appointment, rank, category, prerogatives, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits as those of the Presiding Justice of the Court of Appeals and shall be appointed by the President.

SECTION 15. *Ranks of Prosecutors*. — The Prosecutors in the National Prosecution Service shall have the following ranks:

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[78] Republic Act No. 10071, An Act Strengthening and Rationalizing the National Prosecution Service (2010).

Rank	*Position/Title*
Prosecutor V	(1) Senior Deputy State Prosecutors; (2) Regional Prosecutors; and (3) Provincial Prosecutors or City Prosecutors of provinces or cities with at least twenty-five (25) prosecutors and City Prosecutors of cities within a metropolitan area established by law
Prosecutor IV	(1) Deputy State Prosecutors; (2) Deputy Regional Prosecutors (3) Provincial Prosecutors or City Prosecutors of provinces or cities with less than twenty-five (25) prosecutors; and (4) Deputy Provincial Prosecutors or Deputy City Prosecutors of provinces or cities with at least twenty- five (25) prosecutors; and Deputy City Prosecutors of cities within a metropolitan area established by law.
x x x	x x x x x x

SECTION 16. *Qualifications, Ranks and Appointments of Prosecutors and Other Prosecution Officers*. — Prosecutors with the rank of Prosecutor V shall have the same qualifications for appointment, rank, category, prerogatives, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits as those of an **Associate Justice of the Court of Appeals.**

Prosecutors with the rank of Prosecutor IV shall have the same qualifications for appointment, rank, category, prerogatives, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits as those of a Judge of the Regional Trial Court.

A reading of B.P. 129 reveals, in turn, that the Presiding Justice and the Associate Justices of the Court of Appeals[79] are required to have the same qualifications as the members of this

[79] Section 7 of B.P. 129 states:

Section 7. Qualifications. – The Presiding Justice and the Associate Justice shall have the same qualifications as those provided in Constitution for Justice of the Supreme Court.

Court.[80] On the other hand, judges of the regional trial courts are governed by a separate provision.[81]

Based on the foregoing, it is clear that occupants of the subject PAO positions are only mandated to comply with requirements as to age, citizenship, education, and experience. Since third-level eligibility is not at all mentioned in the law, it would be improper for the CESB to impose this additional qualification as a prerequisite to permanent appointments.[82] To do so would be to amend the law and to overrule Congress.

While the CESB has been granted the power to prescribe entrance requirements for the third-level of the civil service, this power cannot be construed as the authority to modify the qualifications specifically set by law for certain positions. Hence,

[80] Article VIII, Section 7 of the 1987 Constitution, provides:

SECTION 7. (1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines.

(2) The Congress shall prescribe the qualifications of judges of lower courts, but no person may be appointed judge thereof unless he is a citizen of the Philippines and a member of the Philippine Bar.

(3) A Member of the Judiciary must be a person of proven competence, integrity, probity, and independence.

[81] Section 15 of B.P. 129 states:

Section 15. Qualifications.

– No person shall be appointed Regional Trial Judge unless he is a natural-born citizen of the Philippines, at least thirty-five years of age, and for at least ten years, has been engaged in the practice of law in the Philippines or has held a public office in the Philippines requiring admission to the practice of law as an indispensable requisite.

[82] In *Juliano v. Subido*, (159 Phil. 534 [1975]), the Court explained:

As was pointed out by petitioners, in the absence of a statute enabling respondent Commissioner of Civil Service to require as a condition for eligibility to such position at least four years of trial work at a court of first instance level, then his actuation calls for nullification. It is undoubted that respondent Commissioner of Civil Service could not locate the source of such authority in the Constitution. In its absence, he must look to an enactment of the Congress of the Philippines. There is none. x x x.

even granting that the occupants of the subject positions indeed exercise managerial and executive functions as incidents of their primary roles, the CESB has no power to impose additional qualifications for them. It cannot use the authority granted to it by Congress itself to defeat the express provisions of statutes enacted by the latter.

It is also beyond the power of the CESB to question or overrule the specific qualifications imposed by Congress for the subject positions. The legislature must be deemed to have considered the entirety of the functions attendant to these posts when it enacted R.A. 9406 and prescribed the relevant qualifications for each position. The choice **not** to require third level eligibility in this instance must be respected – not only by the CESB but also by this Court – as a matter that goes into the wisdom and the policy of a statute.[83]

The intent of R.A. 9406 to establish and maintain the parity in qualifications between the senior officials of the PAO and the NPS must be respected.

This Court must likewise reject the CESB's contention that the declassification of positions in the NPS (as a result of the enactment of R.A. 10071) cannot benefit the PAO because of a supposed difference in their functions. This argument goes against the express terms and the clear intent of R.A. 9406 and is therefore untenable.

As stated previously, Section 5 of R.A. 9406 amended the Administrative Code of 1987. The amendment was done to provide for "the same qualifications for appointment, rank, salaries, allowances, and retirement privileges" of senior officials of both the PAO and the NPS. The deliberations of Congress on R.A. 9406 reveal its intention to establish parity between the two offices. The lawmakers clearly viewed these officers as counterparts in the administration of justice:

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[83] See *Gonzales III v. Office of the President of the Philippines*, 725 Phil. 380 (2014).

Senator Enrile. Well, I agree with the gentleman. **As I said, we should equalize the prosecution and the defense. The PAO Office is actually an arm of the same government to protect those who need protection.**

Senator Pimentel. That is right.

Senator Enrile. **At the same time, the Prosecution Service is the arm of the government to punish those who would need punishment. So, these two perform the same class of service for the nation and they should be equalized.**

Senator Pimentel. Yes, I totally agree with that, that is why precisely I made this observation that talking alone of starting pay, the level of starting pay of a PAO lawyer should not be lower than the starting pay of a prosecutor.

Now maybe at the proper time we can insert that amendment.

Senator Enrile. I will be glad to receive the proposed amendment.[84] (Emphases supplied)

During the bicameral conference on the proposed bill, Senator Franklin M. Drilon explained that equal treatment of the two offices was essential:

SEN. DRILON. Yes, this is our amendment that the PAO chief should have the same salary as the Chief State Prosecutor and down the line, the Assistant Chief State Prosecutor, etcetera. And I want to put this on record because there are PAO lawyers here. There are PAO lawyers here before us and we want to explain why we have placed this.

x x x x x x x x x

SEN. DRILON. All right. As I said – you know, I want to put on record why we had tried to streamline the salary structure and place it at the same level as the Chief State Prosecutor. Because we do not want a salary distortion in the Department of Justice where you have the PAO higher than the prosecutors. That's why we want to put them on equal footing rather than mag – you know, there'll be whipsawing. You place the prosecutors below the PAO. I can assure you that tomorrow the PAO will come to us – the prosecutors will

[84] II RECORD, SENATE 13TH CONGRESS 3RD SESSION, 386 (13 November 2006).

come to us and say, "Put us higher than the PAO lawyers." So you will have whipsawing here. [85]

Although these statements were made to address the specific issue of salary, this Court considers them as manifestations of the intent to create and maintain parity between prosecutors and public attorneys. In *Re: Vicente S.E. Veloso,*[86] this Court considered similar provisions in other laws as confirmations of the legislative intent to grant equal treatment to certain classes of public officers:

> Nonetheless, there are existing laws which expressly require the qualifications for appointment, confer the rank, and grant the salaries, privileges, and benefits of members of the Judiciary on other public officers in the Executive Department, such as the following:
>
> (a) the Solicitor General and Assistant Solicitor Generals of the Office of the Solicitor General (OSG); and
>
> (b) the Chief Legal Counsel and the Assistant Chief Legal Counsel, the Chief State Prosecutor, and the members of the National Prosecution Service (NPS) in the Department of Justice.
>
> The intention of the above laws is to establish a parity in qualifications required, the rank conferred, and the salaries and benefits given to members of the Judiciary and the public officers covered by the said laws. The said laws seek to give equal treatment to the specific public officers in the executive department and the Judges and Justices who are covered by Batas Pambansa Blg. 129, as amended, and other relevant laws. In effect, these laws recognize that public officers who are expressly identified in the laws by the special nature of their official functions render services which are as important as the services rendered by the Judges and Justices. They acknowledge the respective roles of those public officers and of the members of the Judiciary in the promotion of justice and the proper functioning of our legal and judicial systems.

To fulfill the legislative intent to accord equal treatment to senior officials of the PAO and the NPS, parity in their

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[85] Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 2171 and House Bill No. 5921 (Re: Reorganizing and Strengthening the Public Attorney's Office), pp. 53-54.

[86] A.M. Nos. 12-8-07-CA, 12-9-5-SC & 13-02-07-SC (Resolution), 26 July 2016.

qualifications for appointment must be maintained. Accordingly, the revised qualifications of those in the NPS must also be considered applicable to those in the PAO. The declassification of positions in the NPS should thus benefit their counterpart positions in the PAO. There is no justification for treating the two offices differently, given the plain provisions and the rationale of the law.

This Court would render nugatory both the terms and the intent of the law if it sustains the view of the CESB. We cannot construe R.A. 9046 in relation to P.D. 1275 only, while disregarding the amendments brought about by R.A. 10071. To do so would defeat the legislature's very purpose, which is to equalize the qualifications of the NPS and the PAO.

Based on the foregoing discussion, it is evident that the CSC acted within its jurisdiction and authority as the central personnel agency of the government when it passed upon the appeal filed by the PAO from CESB Resolution No. 918. Further, there was no grave abuse of discretion on the part of the CSC when it reversed the said resolution, which refused to declassify the subject PAO positions. As the CSC noted, the third-level eligibility required by the CESB as an additional qualification for these posts contravened not only the express terms, but also the clear intent of R.A. 9406.

For the reasons stated above, and as a consequence of the improper remedy the CESB has resorted to, this Court must dismiss the instant petition.

WHEREFORE, the Petition for Certiorari and Prohibition is **DISMISSED** for lack of merit. CSC Decision No. 110067 and Resolution No. 1100719 dated 15 February 2011 and 1 June 2011, respectively, are hereby **AFFIRMED**.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Mendoza, Reyes, Perlas-Bernabe, Leonen, and *Caguioa, JJ.,* concur.

Bersamin, J., see concurring and dissenting opinion.

Jardeleza, J., no part.

CONCURRING & DISSENTING OPINION

BERSAMIN, *J.*:

I **CONCUR** in the result, but I have to tender a different view concerning the procedural aspect of the case.

The case was commenced by petition for *certiorari* and prohibition in order to assail the decision of the Civil Service Commission (CSC): (*a*) assuming jurisdiction over the appeal from the decision of petitioner Career Executive Service Board (CESB); and (*b*) ruling that certain positions within the Public Attorney's Office (PAO) do not require third-level eligibility.

The main opinion holds that the petitioner's choice of the special civil actions for *certiorari* and prohibition was inappropriate. It reminds that Section 1 and Section 2 of Rule 65 of the *Rules of Court* require the concurrence of a showing: (*a*) of grave abuse of discretion on the part of the respondent; and (*b*) that there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law. It holds that the absence of one of the requirements will render the resort to the remedies of the special civil actions for *certiorari* and prohibition inappropriate. Citing *Mahinay v. Court of Appeals*,[1] it declares that because the decisions of the CSC could be appealed by petition for review in accordance with Rule 43 of the *Rules of Court*, the petitioner should not have resorted to *certiorari* and prohibition, even if grave abuse of discretion was alleged.

It is in respect of this holding that I offer a contrary view.

Section 1 and Section 2 of Rule 65, indeed, require that "there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law." Yet, the requirement does not necessarily mean that the availability of the appeal immediately bars the resort to *certiorari* and prohibition. My understanding is that Rule 65 also contemplates a situation in which appeal or another remedy in the ordinary course of law is available but such appeal

[1] G.R. No. 152457, April 30, 2008, 553 SCRA 171.

or other remedy is not plain, speedy and adequate to address the petitioner's grievance. The petitioner is then called upon to so allege in the petition for *certiorari* or prohibition and to prove that there is no plain, speedy, and adequate remedy in the ordinary course of law available to him, thus:

> [I]t is incumbent upon an applicant for a writ of *certiorari* to allege with certainty in his verified petition facts showing that "there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law," because this is an indispensable ingredient of a valid petition for *certiorari*. "Being a special civil action, petitioner-appellant must allege and prove that he has no other speedy and adequate remedy." "**Where the existence of a remedy by appeal or some other plain, speedy and adequate remedy precludes the granting of the writ, the petitioner must allege facts showing that any existing remedy is impossible or unavailing, or that excuse petitioner for not having availed himself of such remedy**. A petition for *certiorari* which does not comply with the requirements of the rules may be dismissed.[2] (Bold underscoring is supplied for emphasis)

The phrase *no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law* in Section 1 and Section 2 of Rule 65 simply means that the appeal or other remedy available in the ordinary course of law is not equally beneficial, speedy and adequate. The appropriate remedy should not be merely one that at some time in the future will bring about a revival of the judgment complained of in the *certiorari* proceeding, but one that will promptly relieve the petitioner from the injurious effects of that judgment and the acts of the inferior court or tribunal concerned.[3]

Consequently, the availability of the appeal under Rule 43 as a recourse from the adverse decision of the CSC should

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[2] *Candelaria v. Regional Trial Court, Branch 42, City of San Fernando, Pampanga,* G.R. No. 173861, July 14, 2014, 730 SCRA 1, 7; citing *Visca v. Secretary of Agriculture and Natural Resources,* G.R. No. L-40464, May 9, 1989, 173 SCRA 222, 225.

[3] *A.L. Ang Network, Inc. v. Mondejar,* G.R. No. 200804, January 22, 2014, 714 SCRA 514, 521; citing *Conti v. Court of Appeals*, G.R. No. 134441, May 19, 1999, 307 SCRA 486, 495.

not immediately preclude the petitioner's resort to the special civil actions for *certiorari* and prohibition provided the petitioner could sufficiently show that such remedy would not be beneficial, speedy and adequate to address its grievance.

We need to mention, too, that the requirement that there be no other available remedy in the ordinary course of law is not an iron-clad rule. The petition for *certiorari* or prohibition may still prosper despite the availability of such other remedy in certain exceptional circumstances, like: (*a*) when public welfare and the advancement of public policy so dictate; (*b*) when the interests of substantial justice so require; or (*c*) when the questioned order amounts to an oppressive exercise of judicial authority.[4]

As I see it, the petitioner has made out a case that falls under the third exceptional circumstance. The CSC has been alleged to have unduly exercised its jurisdiction over the appeal filed by the Public Attorney's Office (PAO). The petitioner vigorously expressed its opposition to the CSC's jurisdiction over the case. The majority opinion even cites the *Motion for Clarification* of the petitioner made in the CSC to argue against the CSC's jurisdiction because: (*a*) the appeal by the PAO involved a controversy between two government agencies regarding questions of law; and (*b*) the petitioner was an autonomous agency whose decisions were appealable to the Office of the President.

The petition for *certiorari* and prohibition laid down the issue of which between the petitioner and the CSC had jurisdiction to resolve the question of eligibility for certain officials of the PAO. On one hand, the CSC asserted its constitutional mandate to exercise jurisdiction over all personnel matters involving government employees; on the other, the petitioner claimed it had jurisdiction over civil service eligibility concerns. Accordingly, the Court should hold instead that the petition for *certiorari* and prohibition was an appropriate remedy for

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[4] *Philippine Basketball Association v. Gaite*, G.R. No. 170312, June 26, 2009, 591 SCRA 149, 157-158.

the petitioner because of its allegation that the CSC committed grave abuse of discretion in rendering the assailed decision.[5] It was of no significance that questions of law or of fact, or mixed questions of law or fact may be raised through the petition for review under Rule 43.[6]

The majority opinion cites *Mahinay v. Court of Appeals*,[7] where the Court opined that the remedy against the decision of the CSC was an appeal by petition for review under Rule 43; hence, *certiorari* did not avail even if the stated ground was grave abuse of discretion.

In my humble view, *Mahinay* is not an apt authority for the case at bar. *Mahinay* involved the bringing of a motion for extension of time to file a petition for *certiorari* in the Court of Appeals (CA) preparatory to assailing the adverse decision rendered by the CSC affirming the petitioner's dismissal from the service. The CA denied the motion on the basis that *certiorari* was the wrong mode to challenge the decision of the CSC and because the motion for extension of time had been filed late. The CA pointed out that the proper mode of appeal was the petition for review under Rule 43 to be filed within 15 days from notice of the resolution considering that the resolution to be assailed was one issued by a quasi-judicial body. The CA later dismissed the petition for *certiorari* ultimately filed by the petitioner to annul the decision of the CSC.

This brings me to my other point for this separate opinion.

Section 1 of Rule 43 provides:

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[5] See *Laurel v. Social Security System*, G.R. No. 168707, September 15, 2010, 630 SCRA 464.

[6] Section 3, Rule 43 of the *Rules of Court* states:

Section 3. *Where to appeal*. — An appeal under this Rule may be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law. (n)

[7] *Supra* note 1.

Section 1. *Scope*. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from **awards, judgments, final orders or resolutions** of or authorized by any quasi-judicial agency **in the exercise of its quasi-judicial functions**. Among these agencies are the **Civil Service Commission**, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (n)

The assailed decision of the CSC was not within the purview of the coverage of Section 1, *supra*, because it was not in the category of the "*awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions*" that were reviewable under Rule 43. It related to the CSC's determination of the strictly legal question of which between the petitioner and CSC had jurisdiction over the question in dispute. The awards, judgments, final orders or resolutions of the CSC reviewable under Rule 43 concern actions and disciplinary measures by or against civil service officers and employees. Consequently, the assailed decision of the CSC could be challenged by petition for *certiorari* and prohibition provided the requisites for the challenge were properly alleged and duly established.

Nonetheless, I **VOTE TO DISMISS** the petition because the main opinion is otherwise correct.

EN BANC

[G.R. No. 211010. March 7, 2017]

VICTORIA SEGOVIA, RUEL LAGO, CLARIESSE JAMI CHAN, REPRESENTING THE CARLESS PEOPLE OF THE PHILIPPINES; GABRIEL ANASTACIO, REPRESENTED BY HIS MOTHER GRACE ANASTACIO, DENNIS ORLANDO SANGALANG, REPRESENTED BY HIS MOTHER MAY ALILI SANGALANG, MARIA PAULINA CASTAÑEDA, REPRESENTED BY HER MOTHER ATRICIA ANN CASTAÑEDA, REPRESENTING THE CHILDREN OF THE PHILIPPINES AND CHILDREN OF THE FUTURE; AND RENATO PINEDA JR., ARON KERR MENGUITO, MAY ALILI SANGALANG, AND GLYNDA BATHAN BATERINA, REPRESENTING CAR–OWNERS WHO WOULD RATHER NOT HAVE CARS IF GOOD PUBLIC TRANSPORTATION WERE SAFE, CONVENIENT, ACCESSIBLE AND RELIABLE, *petitioners, vs.* **THE CLIMATE CHANGE COMMISSION, REPRESENTED BY ITS CHAIRMAN, HIS EXCELLENCY BENIGNO S. AQUINO III, AND ITS COMMISSIONERS MARY ANN LUCILLE SERING. HEHERSON ALVAREZ AND NADAREV SANO; DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (*DOTC*) REPRESENTED BY ITS SECRETARY, HONORABLE JOSEPH ABAYA; DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (*DPWH*) AND THE ROAD BOARD, REPRESENTED BY ITS SECRETARY, HONORABLE ROGELIO SINGSON; DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT (*DILG*), REPRESENTED BY ITS SECRETARY, HONORABLE MANUEL ROXAS; DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (*DENR*), REPRESENTED BY ITS SECRETARY, HONORABLE RAMON PAJE; DEPARTMENT OF BUDGET AND MANAGEMENT (*DBM*),**

REPRESENTED BY ITS SECRETARY, HONORABLE FLORENCIO ABAD; METROPOLITAN MANILA DEVELOPMENT AUTHORITY (*MMDA*), REPRESENTED BY ITS CHAIRMAN, FRANCIS TOLENTINO; DEPARTMENT OF AGRICULTURE (*DA*) REPRESENTED BY ITS SECRETARY, HONORABLE PROCESO ALCALA; AND JOHN DOES, REPRESENTING AS YET UNNAMED LOCAL GOVERNMENT UNITS AND THEIR RESPECTIVE LOCAL CHIEF EXECUTIVE, JURIDICAL ENTITIES, AND NATURAL PERSONS WHO FAIL OR REFUSE TO IMPLEMENT THE LAW OR COOPERATE IN THE IMPLEMENTATION OF THE LAW, *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE FOR ENVIRONMENTAL CASES (RPEC); WRIT OF *KALIKASAN*; THE WRIT IS AN EXTRAORDINARY REMEDY COVERING ENVIRONMENTAL DAMAGE OF SUCH MAGNITUDE THAT WILL PREJUDICE THE LIFE, HEALTH OR PROPERTY OF INHABITANTS IN TWO OR MORE CITIES OR PROVINCES.— The RPEC did liberalize the requirements on standing, allowing the filing of citizen's suit for the enforcement of rights and obligations under environmental laws. This has been confirmed by this Court's rulings in *Arigo v. Swift*, and *International Service for the Acquisition of Agri-BioTech Applications, Inc. v. Greenpeace Southeast Asia (Philippines)*. However, it bears noting that there is a difference between a petition for the issuance of a writ of *kalikasan*, wherein it is sufficient that the person filing represents the inhabitants prejudiced by the environmental damage subject of the writ; and a petition for the issuance of a writ of continuing *mandamus*, which is only available to one who is personally aggrieved by the unlawful act or omission. x x x Under the RPEC, the writ of *kalikasan* is an extraordinary remedy covering environmental damage of such magnitude that will prejudice the life, health or property of inhabitants in two or more cities or provinces. It is designed for a narrow but special purpose:

to accord a stronger protection for environmental rights, aiming, among others, to provide a speedy and effective resolution of a case involving the violation of one's constitutional right to a healthful and balanced ecology that transcends political and territorial boundaries, and to address the potentially exponential nature of large-scale ecological threats. At the very least, the magnitude of the ecological problems contemplated under the RPEC satisfies at least one of the exceptions to the rule on hierarchy of courts, as when direct resort is allowed where it is dictated by public welfare. Given that the RPEC allows direct resort to this Court, it is ultimately within the Court's discretion whether or not to accept petitions brought directly before it.

2. ID.; ID.; ID.; A PARTY CLAIMING THE PRIVILEGE FOR THE ISSUANCE OF A WRIT OF *KALIKASAN* HAS TO SHOW THAT A LAW, RULE OR REGULATION WAS VIOLATED OR WOULD BE VIOLATED; REQUISITES.— For a writ of *kalikasan* to issue, the following requisites must concur: 1. there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology; 2. the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and 3. the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces. It is well-settled that a party claiming the privilege for the issuance of a writ of *kalikasan* has to show that a law, rule or regulation was violated or would be violated. In this case, apart from repeated invocation of the constitutional right to health and to a balanced and healthful ecology and bare allegations that their right was violated, the petitioners failed to show that public respondents are guilty of any unlawful act or omission that constitutes a violation of the petitioners' right to a balanced and healthful ecology.

3. ID.; ID.; WRIT OF CONTINUING *MANDAMUS*; ABSENT A SHOWING THAT THE EXECUTIVE IS GUILTY OF GROSS ABUSE OF DISCRETION, MANIFEST INJUSTICE OR PALPABLE EXCESS OF AUTHORITY, THE GENERAL RULE APPLIES THAT DISCRETION CANNOT BE CHECKED *VIA* A PETITION FOR CONTINUING *MANDAMUS*; CASE AT BAR.— Rule 8, Section 1 of the

RPEC lays down the requirements for a petition for continuing *mandamus* x x x First, the petitioners failed to prove direct or personal injury arising from acts attributable to the respondents to be entitled to the writ. While the requirements of standing had been liberalized in environmental cases, the general rule of real party-in-interest applies to a petition for continuing *mandamus*. Second, the Road Sharing Principle is precisely as it is denominated a principle. It cannot be considered an absolute imposition to encroach upon the province of public respondents to determine the manner by which this principle is applied or considered in their policy decisions. *Mandamus* lies to compel the performance of duties that are purely ministerial in nature, not those that are discretionary, and the official can only be directed by *mandamus* to act but not to act one way or the other. The duty being enjoined in *mandamus* must be one according to the terms provided in the law itself. Thus, the recognized rule is that, in the performance of an official duty or act involving discretion, the corresponding official can only be directed by *mandamus* to act, but not to act one way or the other. x x x At its core, what the petitioners are seeking to compel is not the performance of a ministerial act, but a discretionary act — the manner of implementation of the Road Sharing Principle. Clearly, petitioners' preferred specific course of action (*i.e.* the bifurcation of roads to devote for all-weather sidewalk and bicycling and Filipino-made transport vehicles) to implement the Road Sharing Principle finds no textual basis in law or executive issuances for it to be considered an act enjoined by law as a duty, leading to the necessary conclusion that the continuing *mandamus* prayed for seeks not the implementation of an environmental law, rule or regulation, but to control the exercise of discretion of the executive as to how the principle enunciated in an executive issuance relating to the environment is best implemented. Clearly, the determination of the means to be taken by the executive in implementing or actualizing any stated legislative or executive policy relating to the environment requires the use of discretion. Absent a showing that the executive is guilty of "gross abuse of discretion, manifest injustice or palpable excess of authority," the general rule applies that discretion cannot be checked via this petition for continuing *mandamus*. Hence, the continuing *mandamus* cannot issue.

VELASCO, JR., *J.*, *concurring opinion*:

1. REMEDIAL LAW; RULES OF PROCEDURE FOR ENVIRONMENTAL CASES (RPEC); WRIT OF *KALIKASAN*; THE MAGNITUDE OF THE ECOLOGICAL PROBLEMS CONTEMPLATED UNDER THE RPEC SATISFIES AT LEAST ONE OF THE EXCEPTIONS TO THE RULE ON HEIRARCHY OF COURTS, THAT IS, DIRECT RESORT TO THIS COURT ALLOWED WHERE IT IS "DICTATED BY THE PUBLIC WELFARE."— The omission of the trial courts with limited jurisdiction in Section 3, Rule 7, Part III of the RPEC was not by mere oversight. Rather, the limitation of the venues to this Court and the CA, whose jurisdiction is national in scope, is the intended solution to controversies involving environmental damage of such magnitude as to affect the "inhabitants in [at least] two or more cities or provinces." Surely, the scale of impact of the ecological problems sought to be addressed by a writ of *kalikasan* sets it apart from the other special civil actions under the other rules issued by this Court. Thus, to insist on the application of the technical principle on hierarchy of courts will only negate the emphasis given to this difference and the acknowledgement that environmental challenges deserve the immediate attention by the highest court of the land, even at the first instance. At the very least, the magnitude of the ecological problems contemplated under the RPEC satisfies at least one of the exceptions to the rule on hierarchy of courts, i.e., direct resort to this court is allowed where it is "dictated by the public welfare." In environmental cases, this Court cannot afford to be self-important and promptly deny petitions on the cliched ground that Ours is the "court of last resort" that cannot be "burdened with the task of dealing with cases in the first instance." We must take stock and bear to recall that the rule on hierarchy of courts was created simply because this Court is not a trier of facts. Accordingly, in cases involving warring factual allegations, we applied this rule to require litigants to "repair to the trial courts at the first instance to determine the truth or falsity of these contending allegations on the basis of the evidence of the parties." Under the RPEC, however, this Court burdened itself to resolve factual questions so that the rule finds no application.

2. ID.; ID.; WRIT OF CONTINUING *MANDAMUS*; THE IMPLEMENTATION OF ROAD SHARING PRINCIPLE ITSELF, AS OPPOSED TO THE BIFURCATION OF THE ROADS, IS AN ACT THAT CAN BE THE SUBJECT OF CONTINUING *MANDAMUS* UNDER THE RPEC; CASE AT BAR.— On the issue for the issuance of a continuing *mandamus* thus prayed in the petition, I concur with the *ponencia* that mandamus does not indeed lie to compel a discretionary act. It cannot be issued to require a course of conduct. Thus, I cannot endorse the issuance of a continuing *mandamus* to compel the enforcement of the bifurcation of roads. As the *ponencia* has stated, such action amounts to requiring the respondents to act in a particular way in the implementation of the Road Sharing Principle adopted in EO 774 and AO 254. While a continuing *mandamus* cannot, however, be used to oblige the respondents to act one way or the other, it can be used to compel the respondents to act and implement the Road Sharing Principle in whatever manner they deem best. In other words, the implementation of the Road Sharing Principle itself, as opposed to the bifurcation of the roads, is an act that can be the subject of continuing *mandamus* under the RPEC. On this point, I digress from the *ponencia*.

LEONEN, *J.*, *concurring opinion*:

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; REAL PARTY IN INTEREST; THE RULES OF COURT PROVIDES THAT EVERY ACTION MUST BE PROSECUTED OR DEFENDED IN THE NAME OF THE PERSON WHO WOULD BENEFIT OR BE INJURED BY THE COURT'S JUDGMENT.— Locus standi or the standing to sue cannot be easily brushed aside for it is demanded by the Constitution. x x x Fundamentally, only parties who have sustained direct injury are allowed to bring the suit in court. Rule 3, Section of the Rules of Court provides that every action must be prosecuted or defended in the name of the person who would benefit or be injured by the court's judgment. This person is known as the real party in interest. In environmental cases, this rule is in Rule 2 Section 4 of the Rules of Procedure for Environmental Cases.

2. ID.; ID.; ID.; THREE INSTANCES WHEN A PERSON WHO IS NOT A REAL PARTY IN INTEREST CAN FILE ON BEHALF OF THE REAL PARTY.— There are three instances when person who is not real party in interest can file case on behalf of the real party: One, is representative suit under Rule 3 Section 3 of the Rules of Court where representative files the case on behalf of his principal: x x x A class suit is a specie of a representative suit insofar as the persons who institute it represent the entire class of persons who have the same interest or who suffered the same injury. However, unlike representative suits, the persons instituting class suit are themselves real parties in interest and are not suing merely as representatives. Lastly, there is citizen suit where Filipino can invoke environmental laws on behalf of other citizens including those yet to be born. This is found under Rule 2 Section 5 of the Rules of Procedure for Environmental Cases.

3. ID.; ID.; ID.; ID.; REQUIREMENTS WHEN A CLASS SUIT CAN PROSPER, ENUMERATED.— A class suit can prosper only: (a) when the subject matter of the controversy is of common or general interest to many persons; (b) when such persons are so numerous that it is impracticable to join them all as parties; and (c) when such persons are sufficiently numerous as to represent and protect fully the interests of all concerned. These requirements are found in Rule 3, Section 12 of the Rules of Court, x x x.

APPEARANCES OF COUNSEL

Vanessa J. Gumban for petitioners.
The Solicitor General for respondents.

D E C I S I O N

CAGUIOA, *J.*:

This is a petition for the issuance of writs of *kalikasan* and continuing *mandamus* to compel the implementation of the following environmental laws and executive issuances —

Republic Act No. (RA) 9729[1] (Climate Change Act), and RA 8749[2] (Clean Air Act); Executive Order No. 774[3] (EO 774); AO 254, s. 2009[4] (AO 254); and Administrative Order No. 171, s. 2007[5] (AO 171).

Accordingly, the Petitioners seek to compel: *(a)* the public respondents to: *(1)* implement the Road Sharing Principle in all roads; *(2)* divide all roads lengthwise, one-half (½) for all-weather sidewalk and bicycling, the other half for Filipino-made transport vehicles; *(3)* submit a time-bound action plan to implement the Road Sharing Principle throughout the country; *(b)* the Office of the President, Cabinet officials and public employees of Cabinet members to reduce their fuel consumption by fifty percent (50%) and to take public transportation fifty percent (50%) of the time; *(c)* Public respondent DPWH to demarcate and delineate the road right-of-way in all roads and sidewalks; and *(d)* Public respondent DBM to instantly release funds for Road Users' Tax.[6]

The Facts

To address the clamor for a more tangible response to climate change, Former President Gloria Macapagal-Arroyo issued AO 171 which created the Presidential Task Force on Climate Change (PTFCC) on February 20, 2007. This body was reorganized through EO 774, which designated the President as Chairperson,

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[1] An Act Mainstreaming Climate Change into Government Policy Formulations, Establishing the Framework Strategy and Program on Climate Change, Creating for this Purpose the Climate Change Commission, and for Other Purposes, otherwise known as the "Climate Change Act of 2009.

[2] An Act Providing for a Comprehensive Air Pollution Control Policy and for Other Purposes otherwise known as the "Philippine Clean Air Act of 1999".

[3] Reorganizing the Presidential Task Force on Climate Change.

[4] Mandating the Department of Transportation and Communications to Lead in Formulating a National Environmentally Sustainable Transport (EST) for the Philippines.

[5] Creating the Presidential Task Force on Climate Change.

[6] See *rollo*, pp. 30-31.

and cabinet secretaries as members of the Task Force. EO 774 expressed what is now referred to by the petitioners as the "Road Sharing Principle." Its Section 9(a) reads:

> Section 9. *Task Group on Fossil Fuels*. – (a) To reduce the consumption of fossil fuels, the Department of Transportation and Communications (DOTC) shall lead a Task Group to reform the transportation sector. The new paradigm in the movement of men and things must follow a simple principle: "Those who have less in wheels must have more in road." For this purpose, the system shall favor nonmotorized locomotion and collective transportation system (walking, bicycling, and the man-powered mini-train).

In 2009, AO 254 was issued, mandating the DOTC (as lead agency for the Task Group on Fossil Fuels or *TGFF*) to formulate a national Environmentally Sustainable Transport Strategy (*EST*) for the Philippines. The Road Sharing Principle is similarly mentioned, thus:

> **SECTION 4.** *Functions of the TGFF* — In addition to the functions provided in EO 774, the TGFF shall initiate and pursue the formulation of the National EST Strategy for the Philippines.
>
> Specifically, the TGFF shall perform the following functions:
>
> (a) Reform the transport sector to reduce the consumption of fossil fuels. The new paradigm in the movement of men and things must follow a simple principle: "Those who have less in wheels must have more in road." For this purpose, the system shall favor non-motorized locomotion and collective transportation system (walking, bicycling, and the man-powered mini-train).
>
> x x x x x x x x x

Later that same year, Congress passed the Climate Change Act. It created the Climate Change Commission which absorbed the functions of the PTFCC and became the lead policy-making body of the government which shall be tasked to coordinate, monitor and evaluate the programs and action plans of the government relating to climate change.[7]

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[7] Republic Act No. 9729 (2009), Sec. 4.

Herein petitioners wrote respondents regarding their pleas for implementation of the Road Sharing Principle, demanding the reform of the road and transportation system in the whole country within thirty (30) days from receipt of the said letter — foremost, through the bifurcation of roads and the reduction of official and government fuel consumption by fifty percent (50%).[8] Claiming to have not received a response, they filed this petition.

The Petition

Petitioners are Carless People of the Philippines, parents, representing their children, who in turn represent "Children of the Future, and Car-owners who would rather not have cars if good public transportation were safe, convenient, accessible, available, and reliable". They claim that they are entitled to the issuance of the extraordinary writs due to the alleged failure and refusal of respondents to perform an act mandated by environmental laws, and violation of environmental laws resulting in environmental damage of such magnitude as to prejudice the life, health and property of all Filipinos.[9]

These identified violations[10] include: *(a)* The government's violation of "atmospheric trust" as provided under Article XI, Section 1 of the Constitution, and thoughtless extravagance in the midst of acute public want under Article 25 of the Civil Code for failure to reduce personal and official consumption of fossil fuels by at least fifty percent (50%); *(b)* DOTC and DPWH's failure to implement the Road Sharing Principle under EO 774; *(c)* DA's failure to devote public open spaces along sidewalks, roads and parking lots to sustainable urban farming as mandated by Section 12(b)[11] of EO 774; *(d)* DILG's failure

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[8] *Rollo*, pp. 214-215.

[9] See *id*. at 3, 5 and 20.

[10] See *id*. at 23-29.

[11] Section 12. *Task Group on Agriculture*. – x x x

(b) Public open places space along sidewalks and portions of roads and parking lots, which shall be rendered irrelevant by the mind-shift to nonmotorized and collective transportation systems, shall be devoted to

to coordinate with local government units (LGUs) to guide them on the Road Sharing Principle under Section 9(g)[12] of EO 774; *(e)* DENR's failure to reduce air pollutant emissions; and lastly, *(f)* DBM's failure to make available Road Users' Tax for purposes stated in Section 9(e)[13]of EO 774.

In gist, petitioners contend that respondents' failure to implement the foregoing laws and executive issuances resulted in the continued degradation of air quality, particularly in Metro Manila, in violation of the petitioners' constitutional right to a balanced and healthful ecology,[14] and may even be tantamount to deprivation of life, and of life sources or "land, water, and air" by the government without due process of law.[15] They also decry the "unequal" protection of laws in the prevailing scheme, claiming that ninety-eight percent (98%) of Filipinos are discriminated against by the law when the car-owning two percent (2%) is given almost all of the road space and while large budgets are allocated for construction and maintenance

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productive use through sustainable urban farming. These spaces shall be planted with, among others, nutritious fruit crops, vegetables, spices and medicinal herbs. All persons who live in the city who wish to care for a plot of arable land to plant their vegetables shall be provided a stewardship agreement. This agreement shall bind the holder to sustainably use the land plant it with food and other plants like nutritious vegetables, fruits, flowers, spices, etc. and receive benefit from its produce.

[12] Section 9. *Task Group on Fossil Fuels.* –

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(g) The Department of the Interior and Local Government (DILG) shall coordinate with local government units and guide them on the plan to transform the locomotion and transportation system to favor parties who have no motorized vehicles.

[13] Section 9. *Task Group on Fossil Fuels.* –

x x x x x x x x x

(e) The Department of Budget and Management (DBM) shall immediately make available funds from Road Users' Tax for the purposes stated in this Section.

[14] *Rollo*, p. 8.

[15] *Id.* at 27-28.

of roads, hardly any budget is given for sidewalks, bike lanes and non-motorized transportation systems.[16]

Respondents, through the Office of the Solicitor General, filed their *Comment* seeking the outright dismissal of the petition for lack of standing and failure to adhere to the doctrine of hierarchy of courts.[17] Moreover, respondents argue that petitioners are not entitled to the reliefs prayed for.

Specifically, respondents assert that petitioners are not entitled to a writ of *kalikasan* because they failed to show that the public respondents are guilty of an unlawful act or omission; state the environmental law/s violated; show environmental damage of such magnitude as to prejudice the life, health or property of inhabitants of two or more cities; and prove that non-implementation of Road Sharing Principle will cause environmental damage. Respondents likewise assert that petitioners are similarly not entitled to a Continuing *Mandamus* because: *(a)* there is no showing of a direct or personal injury or a clear legal right to the thing demanded; *(b)* the writ will not compel a discretionary act or anything not in a public officer's duty to do (*i.e.* the manner by which the Road Sharing Principle will be applied; and to compel DA to exercise jurisdiction over roadside lands); and *(c)* DBM cannot be compelled to make an instant release of funds as the same requires an appropriation made by law (Article VI, Section 29[1] of the Constitution) and the use of the Road Users' Tax (more appropriately, the Motor Vehicle Users' Charge) requires prior approval of the Road Board.[18]

In any event, respondents denied the specific violations alleged in the petition, stating that they have taken and continue to take measures to improve the traffic situation in Philippine roads and to improve the environment condition — through projects and programs such as: priority tagging of expenditures for climate

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[16] *Id*. at 26.

[17] *Id.* at 329-332.

[18] *Id*. at 338-347.

change adaptation and mitigation, the Integrated Transport System which is aimed to decongest major thoroughfares, Truck Ban, Anti-Smoke Belching Campaign, Anti-Colorum, Mobile Bike Service Programs, and Urban Re-Greening Programs. These projects are individually and jointly implemented by the public respondents to improve the traffic condition and mitigate the effects of motorized vehicles on the environment.[19] Contrary to petitioners' claims, public respondents assert that they consider the impact of the transport sector on the environment, as shown in the Philippine National Implementation Plan on Environment Improvement in the Transport Sector which targets air pollution improvement actions, greenhouse gases emission mitigation, and updating of noise pollution standards for the transport sector.

In response, petitioner filed their *Reply*, substantially reiterating the arguments they raised in the Petition.

ISSUES

From the foregoing submissions, the main issues for resolution are:

1. Whether or not the petitioners have standing to file the petition;
2. Whether or not the petition should be dismissed for failing to adhere to the doctrine of hierarchy of courts; and
3. Whether or not a writ of *Kalikasan* and/or Continuing *Mandamus* should issue.

RULING

The petition must be dismissed.

Procedural Issues

Citing Section 1, Rule 7 of the Rules of Procedure for Environmental Cases[20] (RPEC), respondents argue that the

[19] *Id*. at 332-338.

[20] Section 1. *Nature of the writ*. — The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization,

petitioners failed to show that they have the requisite standing to file the petition, being representatives of a rather amorphous sector of society and without a concrete interest or injury.[21] Petitioners counter that they filed the suit as citizens, taxpayers, and representatives; that the rules on standing had been relaxed following the decision in *Oposa v. Factoran*;[22] and that, in any event, legal standing is a procedural technicality which the Court may set aside in its discretion.[23]

The Court agrees with the petitioners' position. The RPEC did liberalize the requirements on standing, allowing the filing of citizen's suit for the enforcement of rights and obligations under environmental laws.[24] This has been confirmed by this Court's rulings in *Arigo v. Swift,*[25] and *International Service for the Acquisition of Agri-BioTech Applications, Inc. v. Greenpeace Southeast Asia (Philippines).*[26] However, it bears noting that there is a difference between a petition for the issuance of a writ of *kalikasan*, wherein it is sufficient that the person filing represents the inhabitants prejudiced by the environmental damage subject of the writ;[27] and a petition for the issuance of

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non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

[21] *Rollo*, p. 330.

[22] 296 Phil. 694 (1993).

[23] *Rollo*, pp. 580-581.

[24] RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Part II, Rule 2, Section 5.

[25] G.R. No. 206510, September 16, 2014, 735 SCRA 102, 127-129.

[26] G.R. Nos. 209271, 209276, 209301 & 209430, December 8, 2015, pp. 36-38.

[27] ANNOTATION TO THE RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Part III, Rule 7, Section 1.

a writ of continuing *mandamus*, which is only available to one who is personally aggrieved by the unlawful act or omission.[28]

Respondents also seek the dismissal of the petition on the ground that the petitioners failed to adhere to the doctrine of hierarchy of courts, reasoning that since a petition for the issuance of a writ of *kalikasan* must be filed with the Supreme Court or with any of the stations of the Court of Appeals,[29] then the doctrine of hierarchy of courts is applicable.[30] Petitioners, on the other hand, cite the same provision and argue that direct recourse to this Court is available, and that the provision shows that the remedy to environmental damage should not be limited to the territorial jurisdiction of the lower courts.[31]

The respondents' argument does not persuade. Under the RPEC, the writ of *kalikasan* is an extraordinary remedy covering environmental damage of such magnitude that will prejudice the life, health or property of inhabitants in two or more cities or provinces. It is designed for a narrow but special purpose: to accord a stronger protection for environmental rights, aiming, among others, to provide a speedy and effective resolution of a case involving the violation of one's constitutional right to a healthful and balanced ecology that transcends political and territorial boundaries, and to address the potentially exponential nature of large-scale ecological threats.[32] At the very least, the magnitude of the ecological problems contemplated under the RPEC satisfies at least one of the exceptions to the rule on hierarchy of courts, as when direct resort is allowed where it is dictated by public welfare. Given that the RPEC allows direct resort to this Court,[33] it is ultimately within the Court's discretion whether or not to accept petitions brought directly before it.

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[28] *Id*., Part III, Rule 8.

[29] *Id.*, Part III, Rule 7, Section 3.

[30] *Rollo*, p. 330.

[31] *Id.* at 581.

[32] *Paje v. Casiño*, G.R. Nos. 207257, 207276, 207282 & 207366, February 3, 2015, 749 SCRA 39, 81.

[33] RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Part III, Rule 7, Section 3.

Requisites for issuance of Writs of *Kalikasan* and Continuing *Mandamus*

We find that the petitioners failed to establish the requisites for the issuance of the writs prayed for.

For a writ of *kalikasan* to issue, the following requisites must concur:

1. there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology;
2. the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and
3. the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.[34]

It is well-settled that a party claiming the privilege for the issuance of a writ of *kalikasan* has to show that a law, rule or regulation was violated or would be violated.[35]

In this case, apart from repeated invocation of the constitutional right to health and to a balanced and healthful ecology and bare allegations that their right was violated, the petitioners failed to show that public respondents are guilty of any unlawful act or omission that constitutes a violation of the petitioners' right to a balanced and healthful ecology.

While there can be no disagreement with the general propositions put forth by the petitioners on the correlation of air quality and public health, petitioners have not been able to show that respondents are guilty of violation or neglect of

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[34] *LNL Archipelago Minerals, Inc. v. Agham Party List*, G.R. No. 209165, April 12, 2016, pp. 10-11.

[35] *Id.* at 13.

environmental laws that causes or contributes to bad air quality. Notably, apart from bare allegations, petitioners were not able to show that respondents failed to execute any of the laws petitioners cited. In fact, apart from adducing expert testimony on the adverse effects of air pollution on public health, the petitioners did not go beyond mere allegation in establishing the unlawful acts or omissions on the part of the public respondents that have a causal link or reasonable connection to the actual or threatened violation of the constitutional right to a balanced and healthful ecology of the magnitude contemplated under the Rules, as required of petitions of this nature.[36]

Moreover, the National Air Quality Status Report for 2005-2007 (NAQSR) submitted by the petitioners belies their claim that the DENR failed to reduce air pollutant emissions — in fact, the NAQSR shows that the National Ambient Total Suspended Particulates (TSP) value used to determine air quality has steadily declined from 2004 to 2007,[37] and while the values still exceed the air quality guideline value, it has remained on this same downward trend until as recently as 2011.[38]

On the other hand, public respondents sufficiently showed that they did not unlawfully refuse to implement or neglect the laws, executive and administrative orders as claimed by the petitioners. Projects and programs that seek to improve air quality were undertaken by the respondents, jointly and in coordination with stakeholders, such as: priority tagging of expenditures for climate change adaptation and mitigation, the Integrated Transport System which is aimed to decongest major thoroughfares, Truck Ban, Anti-Smoke Belching Campaign, Anti-Colorum, Mobile Bike Service Programs, and Urban Re-Greening Programs.

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[36] See *Paje v. Casiño, supra* note 32 at 84-85.

[37] *Rollo,* p. 56.

[38] National Air Quality Status Report, 2010-2011. <http://air.emb.gov.ph/wp-content/uploads/2016/04/DenrAirQualityStatReport10-11.pdf.> (last accessed on March 3, 2017).

In fact, the same NAQSR submitted by the petitioners show that the DENR was, and is, taking concrete steps to improve national air quality, such as information campaigns, free emission testing to complement the anti-smoke-belching program and other programs to reduce emissions from industrial smokestacks and from open burning of waste.[39] The efforts of local governments and administrative regions in conjunction with other executive agencies and stakeholders are also outlined.[40]

Similarly, the writ of continuing *mandamus* cannot issue.

Rule 8, Section 1 of the RPEC lays down the requirements for a petition for continuing *mandamus* as follows:

RULE 8

WRIT OF CONTINUING *MANDAMUS*

SECTION 1. *Petition for continuing mandamus*.—When any agency or instrumentality of the government or officer thereof unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law rule or regulation or a right therein, or unlawfully excludes another from the use or enjoyment of such right and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty, attaching thereto supporting evidence, specifying that the petition concerns an environmental law, rule or regulation, and praying that judgment be rendered commanding the respondent to do an act or series of acts until the judgment is fully satisfied, and to pay damages sustained by the petitioner by reason of the malicious neglect to perform the duties of the respondent, under the law, rules or regulations. The petition shall also contain a sworn certification of non-forum shopping.

First, the petitioners failed to prove direct or personal injury arising from acts attributable to the respondents to be entitled to the writ. While the requirements of standing had been

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[39] *Rollo,* p. 96.

[40] *Id*. at 97-100.

liberalized in environmental cases, the general rule of real party-in-interest applies to a petition for continuing *mandamus*.[41]

Second, the Road Sharing Principle is precisely as it is denominated — a principle. It cannot be considered an absolute imposition to encroach upon the province of public respondents to determine the manner by which this principle is applied or considered in their policy decisions. *Mandamus* lies to compel the performance of duties that are purely ministerial in nature, not those that are discretionary,[42] and the official can only be directed by *mandamus* to act but not to act one way or the other. The duty being enjoined in *mandamus* must be one according to the terms provided in the law itself. Thus, the recognized rule is that, in the performance of an official duty or act involving discretion, the corresponding official can only be directed by *mandamus* to act, but not to act one way or the other.[43]

This Court cannot but note that this is precisely the thrust of the petition — to compel the respondents to act one way to implement the Road Sharing Principle — to bifurcate all roads in the country to devote half to sidewalk and bicycling, and the other to Filipino-made transport — when there is nothing in EO 774, AO 254 and allied issuances that require that specific course of action in order to implement the same. Their good intentions notwithstanding, the petitioners cannot supplant the executive department's discretion with their own through this petition for the issuance of writs of *kalikasan* and continuing *mandamus*.

In this case, there is no showing of unlawful neglect on the part of the respondents to perform any act that the law specifically enjoins as a duty —there being nothing in the executive issuances

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[41] See ANNOTATION TO THE RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Part III, Rule 8.

[42] *Special People, Inc. Foundation v. Canda*, 701 Phil. 365, 387 (2013).

[43] See Sereno, Diss. Op. in *MMDA v. Concerned Residents of Manila Bay,* 658 Phil. 223, 268 (2011).

relied upon by the petitioners that specifically enjoins the bifurcation of roads to implement the Road Sharing Principle. To the opposite, the respondents were able to show that they were and are actively implementing projects and programs that seek to improve air quality.

At its core, what the petitioners are seeking to compel is not the performance of a ministerial act, but a discretionary act — the manner of implementation of the Road Sharing Principle. Clearly, petitioners' preferred specific course of action (*i.e.* the bifurcation of roads to devote for all-weather sidewalk and bicycling and Filipino-made transport vehicles) to implement the Road Sharing Principle finds no textual basis in law or executive issuances for it to be considered an act enjoined by law as a duty, leading to the necessary conclusion that the continuing *mandamus* prayed for seeks not the implementation of an environmental law, rule or regulation, but to control the exercise of discretion of the executive as to how the principle enunciated in an executive issuance relating to the environment is best implemented. Clearly, the determination of the means to be taken by the executive in implementing or actualizing any stated legislative or executive policy relating to the environment requires the use of discretion. Absent a showing that the executive is guilty of "gross abuse of discretion, manifest injustice or palpable excess of authority,"[44] the general rule applies that discretion cannot be checked via this petition for continuing *mandamus*. Hence, the continuing *mandamus* cannot issue.

Road Users' Tax

Finally, petitioners seek to compel DBM to release the Road Users' Tax to fund the reform of the road and transportation system and the implementation of the Road Sharing Principle.

It bears clarifying that the Road Users' Tax mentioned in Section 9(e) of EO 774, apparently reiterated in Section 5 of AO 254 is the Special Vehicle Pollution Control Fund component

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[44] See *First Philippine Holdings Corporation v. Sandiganbayan,* 323 Phil. 36, 55 (1996)*; Kant Kwong v. Presidential Commission on Good Government,* 240 Phil. 219, 230 (1987).

of the Motor Vehicle Users' Charge ("***MVUC***") imposed on owners of motor vehicles in RA 8794, otherwise known as the Road Users' Tax Law. By the express provisions of the aforementioned law, the amounts in the special trust accounts of the MVUC are earmarked solely and used exclusively (1) for road maintenance and the improvement of the road drainage, (2) for the installation of adequate and efficient traffic lights and road safety devices, and (3) for the air pollution control, and their utilization are subject to the management of the Road Board.[45] Verily, the petitioners' demand for the immediate and ***unilateral release of the Road Users' Tax by the DBM*** to support the petitioners' operationalization of this Road Sharing Principle has no basis in law. The executive issuances relied upon by the petitioner do not rise to the level of law that can supplant the provisions of RA 8794 that require the approval of the Road Board for the use of the monies in the trust fund. In other words, the provisions on the release of funds by the DBM as provided in EO 774 and AO 254 are necessarily subject to the conditions set forth in RA 8794. Notably, RA 9729, as amended by RA 10174, provides for the establishment for the People's Survival Fund[46] that may be tapped for adaptation activities, which similarly require approval from the PSF Board.[47]

That notwithstanding, the claim made by the petitioners that hardly any budget is allotted to mitigating environmental pollution is belied by the priority given to programs aimed at addressing and mitigating climate change that the DBM and the CCC had been tagging and tracking as priority expenditures since 2013.[48] With the coordination of the DILG, this priority tagging and tracking is cascaded down to the local budget management of local government units.[49]

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[45] Republic Act No. 8794 (2000), Sec. 7.

[46] Republic Act No. 9729 (2009) Sec. 18, as amended.

[47] *Id*. at Sections 23 and 24, as amended.

[48] *Rollo*, p. 333.

[49] Pursuant to DBM-CCC-DILG Joint Memorandum Circular (JMC) No. 2014-01 dated August 7, 2014.

Other causes of action

As previously discussed, the petitioners' failure to show any violation on the part of the respondents renders it unnecessary to rule on other allegations of violation that the petitioners rely upon as causes of action against the public respondents.

In fine, the allegations and supporting evidence in the petition fall short in showing an actual or threatened violation of the petitioners' constitutional right to a balanced and healthful ecology arising from an unlawful act or omission by, or any unlawful neglect on the part of, the respondents that would warrant the issuance of the writs prayed for.

WHEREFORE, the petition is **DISMISSED**.

SO ORDERED.

Sereno, C.J., Carpio, Leonardo-de Castro, Peralta, Bersamin, del Castillo, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Velasco, Jr. and *Leonen, JJ.,* see separate concurring opinions.

Jardeleza, J., no part, prior OSG action.

CONCURRING OPINION

VELASCO, JR., *J.*:

The present case involves the extraordinary remedy of a Writ of *Kalikasan*. Under the Rules of Procedure for Environmental Cases (RPEC), the writ is an extraordinary remedy covering **environmental damage of such magnitude that will prejudice the life, health or property of inhabitants in two or more cities or provinces**.[1] As distinguished from other available remedies in the ordinary rules of court, the Writ of *Kalikasan* is designed for a narrow but special purpose: to accord a stronger

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[1] *LNL Archipelago Minerals, Inc. v. Agham Party List*, G.R. No. 209165, April 12, 2016.

protection for environmental rights, aiming, among others, to provide a speedy and effective resolution of a case involving the violation of one's constitutional right to a healthful and balanced ecology[2] that transcends political and territorial boundaries;[3] to provide a stronger defense for environmental rights through judicial efforts where institutional arrangements of enforcement, implementation and legislation have fallen short;[4] and to address the potentially exponential nature of large-scale ecological threats.[5] Thus, Section 1, Rule 7, Part III of the RPEC provides:

> Section 1. Nature of the writ. — The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

Given the substantially grand intentions underlying the RPEC, it would be a disappointment to rely on the technical principle of the hierarchy of courts to justify the refusal to issue the writ of *kalikasan*. Though there are grounds to deny the instant petition praying for the issuance of the writ, I agree with the *ponencia* that the alleged violation of the principle on hierarchy of courts is not one of them. And as one who was privy to the preparation of the Rules, I deem it best to write my own opinion on the issue.

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[2] *Paje v. Casiño*, G.R. Nos. 207257, 207276, 207282 & 207366, February 3, 2015, Velasco, Jr., concurring.

[3] *Id.*

[4] *Id.*

[5] *Id.*

Section 3, Rule 7, Part III of the RPEC provides the venue where petitions for the issuance of a Writ of Kalikasan may be filed. It plainly states, viz.:

> SEC. 3 *Where to file.* – The petition shall be filed with the Supreme Court **or** with any of the stations of the Court of Appeals.[6]

It is clear that Section 3 uses the word "or," which is a disjunctive article indicating an **alternative**,[7] not successive, character of the right or duty given. The use of "or" in the RPEC indicates that the petitioner/s are given "the **choice** of either, which means that the various members of the enumeration are to be taken separately, with the term signifying disassociation and independence of one thing from each of the other things enumerated."[8] Thus, under Section 3 of the RPEC, the **petitioner/s are given the right to freely choose between this Court and the different stations of the appellate court** in filing their petitions. Claiming otherwise based on the nebulous procedural principle of the hierarchy of courts is a deviation from the basic text of the adverted section. Such departure from the ordinary meaning of the text deprives ordinary citizens of the fair expectation that the procedural rules issued by this Court mean what they say and say what they mean.

Further, the absence of any mention of the first level courts—the municipal trial courts, metropolitan trial courts, and the regional trial courts—is indicative of the exceptional nature of a writ of *kalikasan* and the non-application of the principle to petitions for its issuance. This palpable absence marks the difference from the other special civil actions available under the other rules where this Court is given concurrent jurisdiction not only with the Court of Appeals (CA) but also with the trial courts.

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[6] Emphasis and underscoring supplied.

[7] *Vargas v. Cajucom*, G.R. No. 171095, June 22, 2015, citing *Hacienda Luisita, Inc. v. Presidential Agrarian Reform Council*, G.R. No. 171101, November 22, 2011, 660 SCRA 525, 550-551, quoting *PCI Leasing and Finance, Inc. v. Giraffe-X Creative Imaging, Inc.*, 554 Phil. 288, 302 (2007).

[8] *Id*.

For instance, Section 4, Rule 65 of the Rules of Court[9] specifically identifies the RTC as one of the courts where the petitions for *certiorari*, prohibition, and *mandamus* may be filed. Section 2 of Rule 102 on *Habeas Corpus*[10] likewise names the trial court as a venue where the petition therefor may be filed. In a similar manner, Section 3 of The Rule on Habeas Data[11] lays down at the outset that the Regional Trial Court has jurisdiction over petitions for Habeas Data and states that this Court only has jurisdiction over petitions concerning public data files of government offices. Notable too is Section 3 of the Rule on the Writ of Amparo,[12] which includes the Regional

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[9] SECTION 4. Where Petition Filed. — The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals. Emphasis supplied.

[10] SECTION 2. Who may grant the writ. — The writ of habeas corpus may be granted by the Supreme Court, or any member thereof, on any day and at any time, or by the Court of Appeals or any member thereof in the instances authorized by law, and if so granted it shall be enforceable anywhere in the Philippines, and may be made returnable before the court or any member thereof, or before a Court of First Instance, or any judge thereof for hearing and decision on the merits. It may also be granted by a Court of First Instance, or a judge thereof, on any day and at any time, and returnable before himself, enforceable only within his judicial district.

[11] A.M. No. 08-1-16-SC, February 2, 2008; SECTION 3. Where to File. — The petition may be filed with the Regional Trial Court where the petitioner or respondent resides, or that which has jurisdiction over the place where the data or information is gathered, collected or stored, at the option of the petitioner. The petition may also be filed with the Supreme Court or the Court of Appeals or the Sandiganbayan when the action concerns public data files of government offices.

[12] A.M. No. 07-9-12-SC, September 25, 2007; SECTION 3. Where to File. — The petition may be filed on any day and at any time with the Regional Trial Court of the place where the threat, act or omission was

Trial Court, the Sandiganbayan, and the Court of Appeals in the list of fora with jurisdiction over petitions for the writ of *amparo*.

The omission of the trial courts with limited jurisdiction in Section 3, Rule 7, Part III of the RPEC was not by mere oversight. Rather, the limitation of the venues to this Court and the CA, whose jurisdiction is national in scope, is the intended solution to controversies involving environmental damage of such magnitude as to affect the "inhabitants in [at least] two or more cities or provinces."

Surely, the scale of impact of the ecological problems sought to be addressed by a writ of *kalikasan* sets it apart from the other special civil actions under the other rules issued by this Court. Thus, to insist on the application of the technical principle on hierarchy of courts will only negate the emphasis given to this difference and the acknowledgement that environmental challenges deserve the immediate attention by the highest court of the land, even at the first instance. At the very least, the magnitude of the ecological problems contemplated under the RPEC satisfies at least one of the exceptions to the rule on hierarchy of courts, i.e., direct resort to this court is allowed where it is "dictated by the public welfare."

In environmental cases, this Court cannot afford to be self-important and promptly deny petitions on the clichéd ground

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committed or any of its elements occurred, or with the Sandiganbayan, the Court of Appeals, the Supreme Court, or any justice of such courts. The writ shall be enforceable anywhere in the Philippines.

When issued by a Regional Trial Court or any judge thereof, the writ shall be returnable before such court or judge.

When issued by the Sandiganbayan or the Court of Appeals or any of their justices, it may be returnable before such court or any justice thereof, or to any Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred.

When issued by the Supreme Court or any of its justices , it may be returnable before such Court or any justice thereof, or before the Sandiganbayan or the Court of Appeals or any of their justices, or to any Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred.

that Ours is the "court of last resort" that cannot be "burdened with the task of dealing with cases in the first instance." We must take stock and bear to recall that the rule on hierarchy of courts was created simply because this Court is not a trier of facts. Accordingly, in cases involving warring factual allegations, we applied this rule to require litigants to "repair to the trial courts at the first instance to determine the truth or falsity of these contending allegations on the basis of the evidence of the parties."[13] Under the RPEC, however, this Court burdened itself to resolve factual questions so that the rule finds no application.

Indeed, that petitions for the issuance of a writ of *kalikasan* involve factual matters cannot, without more, justify the claim that the petition must first be filed with the CA on the ground that this Court is not a trier of facts. The RPEC deviates from the other rules on this matter. After all, even if the petition has been initially lodged with the appellate court, the appellant may still raise **questions of fact** on appeal. Section 16, Rule 7, Part III of the RPEC explicitly says so:

> SECTION 16. Appeal. — Within fifteen (15) days from the date of notice of the adverse judgment or denial of motion for reconsideration, any party may appeal to the Supreme Court under Rule 45 of the Rules of Court. **The appeal may raise questions of fact**.[14]

Notably, unlike in the other civil actions, ordinary or special, Section 2(d), Rule 7, Part III of the RPEC requires not only the allegations of ultimate facts but the allegations and attachment of all relevant and material **evidence** to convince the court to issue the writ. Consequently, should the factual allegations in the petition be found insufficient, as stated by the *ponencia*, the denial of the petition must not be anchored on the violation of the rule on hierarchy of courts but on non-compliance with the said requirement. Certainly, an insufficient petition cannot

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[13] *Agan v. Philippine International Air Terminals Co., Inc.*, G.R. No. 155001, January 21, 2004.

[14] Emphasis and underscoring supplied.

be granted even when first filed with the appellate court and not this Court.

With that said, let it be stated that in the instances where this Court referred the petition to the CA for hearing and reception of evidence, it did so not because of the insufficiency of the petition[15] as it had, in fact, issued the writs prayed for. Such practice does not impose another level of bureaucracy given the facilitation by this Court in transferring the records with all the evidence and attachments to the CA. On the other hand, arbitrarily enforcing the rule on hierarchy of courts, denying the petition, insisting that it be filed first with the CA, compelling the reprinting of pleadings and the re-attaching of evidence—– all at the expense of the petitioner/s—–only to entertain the same case on a possible appeal after the filing of yet another petition (this time under Rule 45 of the Rules of Court) can only enliven the bureaucratic spirit.

On the issue for the issuance of a continuing *mandamus* thus prayed in the petition, I concur with the *ponencia* that mandamus does not indeed lie to compel a discretionary act. It cannot be issued to require a course of conduct. Thus, I cannot endorse the issuance of a continuing *mandamus* to compel the enforcement of the bifurcation of roads. As the *ponencia* has stated, such action amounts to requiring the respondents to act in a particular way in the implementation of the Road Sharing Principle adopted in EO 774 and AO 254.

While a continuing *mandamus* cannot, however, be used to oblige the respondents to act one way or the other, it can be used to compel the respondents to act and implement the Road Sharing Principle in whatever manner they deem best. In other words, the implementation of the Road Sharing Principle itself, as opposed to the bifurcation of the roads, is an act that can be the subject of continuing *mandamus* under the RPEC. On this point, I digress from the *ponencia*.

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[15] See *Paje v. Casiño*, *supra* note 2; *Cosalan v. Domogan*, G.R. No. 199486, January 17, 2012; *West Tower Condominium Corp. v. First Phil. Industrial Corp.*, G.R. No. 194239, June 16, 2015.

Nonetheless, the Office of the Solicitor General, on behalf of the respondents, enumerated programs that supposedly serve to implement the Road Sharing Principle,[16] refuting the petitioners' allegation of unlawful neglect on the part of the respondents in the implementation of the principle. Thus, while the sufficiency or wisdom of these programs is not established, I concede that there is no unlawful *neglect* that constrains the issuance of the extraordinary remedy of continuing *mandamus* in the present case.

CONCURRING OPINION

LEONEN, *J.*:

I concur with the *ponencia* of my colleague, Justice Caguioa, that the petition for the issuance of a Writ of Kalikasan should be denied. In addition, I wish to reiterate my view that the parties, who brought this case, have no legal standing, at least as representative parties in a class suit. Petitioners fail to convince that they are representative enough of the interests of the groups they allegedly speak for, some of whom have yet to exist and could therefore have not been consulted.

In their Petition for the issuance of the Writ of Kalikasan and Continuing Mandamus, petitioners declared themselves as the representatives of the following groups:

Victoria Segovia, Ruel Lago, Clariesse Jami Chan represent the CARLESS PEOPLE OF THE PHILIPPINES, who comprise about 98% of the Filipino people.

Gabriel Anastacio represented by his mother Grace Anastacio, Dennis Orlando Sangalang represented by his mother May Alili

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[16] *Rollo*, pp. 334-335. "Respondent MMDA has been implementing various structural and non-structural projects to help alleviate the heavy traffic in Metro Manila while trying to improve the condition of the environment. Its structural projects include: footbridges, rotundas, MMDA Mobile Bike service Program (MMDA Bike-Kadahan), Southwest Integrated Provincial System, MMDA New Traffic Signal System and Command, Control and Communications Center, Revival of the Pasig River Ferry System, Bus Management Dispatch System (Enhanced Bus Route System)."

Sangalang, Maria Paulina Castaneda represented by her mother Atricia Ann Castaneda, stand for the CHILDREN OF THE PHILIPPINES AND CHILDREN OF THE FUTURE (CHILDREN). The children are the persons most vulnerable to air poisoning, vehicular accidents, and assault because of the unsafe and wasteful car-centric transportation policies of respondents.

Renato Pineda, Jr., Aron Kerr Menguito, May Alili Sangalang, and Glynda Bathan Baterina represent CAR-OWNERS who would rather not own, use and maintain a car if only good public transportation and other non-motorized mobility options, such as clean, safe and beautiful sidewalks for walking, bicycle lanes, and waterways, were available.

Petitioners bring this suit as citizens, taxpayers and representatives of many other persons similarly situated but who are too numerous to be brought to this court. All of them stand to be injured by respondents' unlawful neglect of the principle that "Those who have less in wheels must have more in the road" (Road Sharing Principle) as directed by law.[1]

In the *ponencia*, Justice Caguioa noted the respondent's position that petitioners represented an amorphous group, who failed to show they suffered a direct injury. More than failing to show a concrete interest or injury, petitioners also failed to prove that they are true agents of the groups they represent in this action.

Locus standi or the standing to sue cannot be easily brushed aside for it is demanded by the Constitution. *Lozano v. Nograles*[2] reminds us:

The rule on locus standi is not a plain procedural rule but a constitutional requirement derived from Section 1, Article VIII of the Constitution, which mandates courts of justice to settle **only** "actual controversies involving rights which are legally demandable and enforceable."[3] (Emphasis in the original)

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[1] *Rollo*, p. 5.

[2] *Lozano v. Nograles*, 607 Phil. 334 (2009) [Per *J.* Puno, *En Banc*].

[3] *Id.* at 343.

Fundamentally, only parties who have sustained a direct injury are allowed to bring the suit in court. Rule 3, Section 2 of the Rules of Court provides that every action must be prosecuted or defended in the name of the person who would benefit or be injured by the court's judgment. This person is known as the real party in interest.[4] In environmental cases, this rule is in Rule 2, Section 4 of the Rules of Procedure for Environmental Cases, which provides:

Section 4. *Who may file*. — Any real party in interest, including the government and juridical entities authorized by law, may file a civil action involving the enforcement or violation of any environmental law.

There are three instances when a person who is not a real party in interest can file a case on behalf of the real party: One, is a representative suit under Rule 3, Section 3 of the Rules of Court where a representative files the case on behalf of his principal:[5]

Section 3. Representatives as parties. — Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of a case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal.

A class suit is a specie of a representative suit insofar as the persons who institute it represent the entire class of persons who have the same interest or who suffered the same injury.

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[4] RULES OF COURT, Rule 3, Sec. 2 provides: Section 2. Parties in interest. — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest. (2a)

[5] RULES OF COURT, Rule 3, Sec. 3 provides:

However, unlike representative suits, the persons instituting a class suit are themselves real parties in interest and are not suing merely as representatives. A class suit can prosper only:

(a) when the subject matter of the controversy is of common or general interest to many persons;

(b) when such persons are so numerous that it is impracticable to join them all as parties; and

(c) when such persons are sufficiently numerous as to represent and protect fully the interests of all concerned.[6]

These requirements are found in Rule 3, Section 12 of the Rules of Court, which provides:

SEC. 12. Class suit. — When the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all as parties, a number of them which the court finds to be sufficiently numerous and representative as to fully protect the interests of all concerned may sue or defend for the benefit of all. Any party in interest shall have the right to protect his individual interest.

Lastly, there is a citizen suit where a Filipino can invoke environmental laws on behalf of other citizens including those yet to be born. This is found under Rule 2 Section 5 of the Rules of Procedure for Environmental Cases, which state:

SEC. 5. *Citizen suit.* — Any Filipino citizen in representation of others, including minors or generations yet unborn may file an action to enforce rights or obligations under environmental laws. Upon the filing of a citizen suit, the court shall issue an order which shall contain a brief description of the cause of action and the reliefs prayed for, requiring all interested parties to manifest their interest to intervene in the case within fifteen (15) days from notice thereof. The plaintiff may publish the order once in a newspaper of a general circulation in the Philippines or furnish all affected *barangays* copies of said order.

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[6] Concurring and Dissenting Opinion of *J*. Leonen in *Paje v. Casiño,* G.R. Nos. 207257, 207276, 207282 & 207366, February 3, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/207257_leonen.pdf> 6 [Per *J*. Del Castillo, *En Banc*].

This rule is derived from *Oposa v. Factoran*,[7] where the Court held that minors have the personality to sue on behalf of generations yet unborn:

> Petitioners minors assert that they represent their generation as well as generations yet unborn. We find no difficulty in ruling that they can, for themselves, for others of their generation and for the succeeding generations, file a class suit. Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned.[8]

It is my view that the *Oposa* Doctrine is flawed in that it allows a self-proclaimed "representative," via a citizen suit, to speak on behalf of a whole population and legally bind it on matters regardless of whether that group was consulted. As I have discussed in my Concurring Opinion in *Arigo v. Swift,*[9] there are three (3) dangers in continuing to allow the present generation to enforce environmental rights of the future generations:

> First, they run the risk of foreclosing arguments of others who are unable to take part in the suit, putting into question its representativeness. Second, varying interests may potentially result in arguments that are bordering on political issues, the resolutions of which do not fall upon this court. Third, automatically allowing a class or citizen's suit on behalf of minors and generations yet unborn may result in the oversimplification of what may be a complex issue, especially in light of the impossibility of determining future generation's tre interests on the matter.[10]

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[7] *Oposa v. Factoran, Jr.*, 296 Phil. 694 (1993) [Per *J*. Davide, Jr., *En Banc*].

[8] *Id.* at 711.

[9] Concurring Opinion of *J*. Leonen in *Arigo v. Swift*, G.R. No. 206510, September 15, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/206510_leonen.pdf> [Per *J*. Villarama, Jr., *En Banc*].

[10] *Id*. at 10–11.

This doctrine binds an unborn generation to causes of actions, arguments, and reliefs, which they did not choose.[11] It creates a situation where the Court will decide based on arguments of persons whose legitimacy as a representative is dubious at best. Furthermore, due to the nature of the citizen's suit as a representative suit, [12] *res judicata* will attach and any decision by the Court will bind the entire population. Those who did not consent will be bound by what was arrogated on their behalf by the petitioners.

I submit that the application of the *Oposa* Doctrine should be abandoned or at least limited to situations when:

(1) "There is a clear legal basis for the representative suit;

(2) There are actual concerns based squarely upon an existing legal right;

(3) There is no possibility of any countervailing interests existing within the population represented or those that are yet to be born; and

(4) There is an absolute necessity for such standing because there is a threat or catastrophe so imminent that an immediate protective measure is necessary."[13]

I find objectionable the premise that the present generation is absolutely qualified to dictate what is best for those who will exist at a different time, and living under a different set of circumstances. As noble as the "intergenerational responsibility" principle is, it should not be used to obtain judgments that would

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[11] *Id*. at 2.

[12] Concurring and Dissenting Opinion of *J*. Leonen in *Paje v. Casiño,* G.R. Nos. 207257, 207276, 207282 & 207366*,* February 3, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/207257_leonen.pdf> 4 [Per *J*. Del Castillo, *En Banc*].

[13] Concurring and Dissenting Opinion of *J*. Leonen in *Paje v. Casiño,* G.R. Nos. 207257, 207276, 207282 & 207366*,* February 3, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/207257_leonen.pdf> 5–6 [Per *J*. Del Castillo, *En Banc*].

preclude and constrain future generations from crafting their own arguments and defending their own interests.[14]

It is enough that this present generation may bring suit on the basis of their own right. It is not entitled to rob future generations of both their agency and their autonomy.

ACCORDINGLY, I vote to **DISMISS** the petition.

EN BANC

[G.R. No. 216637. March 7, 2017]

AGAPITO J. CARDINO, *petitioner, vs.* **COMMISSION ON ELECTIONS *EN BANC* and ROSALINA G. JALOSJOS *a.k.a.* ROSALINA JALOSJOS JOHNSON,** *respondents.*

SYLLABUS

1. POLITICAL LAW; REPUBLIC ACT NO. 9225 (THE CITIZENSHIP RETENTION AND REACQUISITION ACT OF 2003); THE OATH IS AN ABBREVIATED REPATRIATION PROCESS THAT RESTORES ONE'S FILIPINO CITIZENSHIP AND ALL CIVIL AND POLITICAL RIGHTS AND OBLIGATIONS CONCOMITANT THEREWITH, SUBJECT TO THE CONDITIONS IMPOSED BY LAW; CASE AT BAR.— In *Sobejana-Condon v. Commission on Elections*, the Court explained in detail the requirements that must be complied with under Republic Act

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[14] Concurring Opinion of *J.* Leonen in *Arigo v. Swift*, G.R. No. 206510, September 15, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/206510_leonen.pdf> 13 [Per *J.* Villarama, Jr., *En Banc*].

No. 9225 before a person with dual citizenship can be qualified to run for any elective public office, to wit: [Republic Act] No. 9225 allows the retention and re-acquisition of Filipino citizenship for natural-born citizens who have lost their Philippine citizenship by taking an oath of allegiance to the Republic, thus: **Section 3.** ***Retention of Philippine Citizenship.*** x x x The oath is an abbreviated repatriation process that restores one's Filipino citizenship and all civil and political rights and obligations concomitant therewith, subject to certain conditions imposed in Section 5, x x x In this case, the crux of the controversy involves the validity of Jalosjos' Affidavit of Renunciation. x x x The COMELEC *En Banc* affirmed the ruling of the Second Division that the date of July 16, 2012 in the Affidavit of Renunciation was indeed a clerical error.

2. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; FINDINGS OF FACT OF ADMINISTRATIVE BODIES, WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE, ARE FINAL AND NON-REVIEWABLE BY COURTS OF JUSTICE.— The COMELEC Second Division gave greater weight to the evidence offered by Jalosjos, particularly the testimony of Judge De Guzman-Laput, who unequivocally stated that Jalosjos personally appeared before her sala on July 19, 2012 to subscribe to the Affidavit of Renunciation. The COMELEC Second Division found that Cardino failed to disprove Judge De Guzman-Laput's testimony. After carefully reviewing the evidence on hand, the Court finds no proper reason to disturb the factual findings of the COMELEC. We reiterate our ruling in *Typoco v. Commission on Elections* that: The findings of fact of administrative bodies, when supported by substantial evidence, are **final and non-reviewable** by courts of justice.

APPEARANCES OF COUNSEL

George Erwin M. Garcia for petitioner.
The Solicitor General for public respondent.
Romulo B. Macalintal for respondent Jaloslos.

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

The Court resolves the instant petition for *certiorari*[1] under Rule 64 in relation to Rule 65 of the Rules of Court filed by petitioner Agapito J. Cardino (Cardino), which assails the Resolution[2] dated December 16, 2014 of the Commission on Elections (COMELEC) Second Division and the Resolution[3] dated January 30, 2015 of the COMELEC *En Banc* in EPC No. 2013-06. Both resolutions denied the petition for *quo warranto*[4] filed by Cardino against private respondent Rosalina G. Jalosjos (Jalosjos).

The Facts

During the May 13, 2013 Elections, Cardino and Jalosjos both ran for the position of Mayor of Dapitan City, Zamboanga del Norte. On May 15, 2013, Jalosjos was proclaimed the winner after garnering 18,414 votes compared to Cardino's 16,346 votes.

Cardino immediately filed a petition for *quo warranto* before the COMELEC, which sought to nullify the candidacy of Jalosjos on the ground of ineligibility. Said petition was docketed as EPC No. 2013-06 before the COMELEC Second Division.

Cardino alleged that Jalosjos was a former natural-born Filipino citizen who subsequently became a naturalized citizen of the United States of America (USA). Jalosjos later applied for the reacquisition of her Filipino citizenship under Republic Act No. 9225[5] before the Consulate General of the Philippines in Los Angeles, California, USA. On August 2, 2009, Jalosjos

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[1] *Rollo*, pp. 2-51.

[2] *Id*. at 55-67; penned by Commissioner Elias R. Yusoph with Commissioners Luie Tito F. Guia and Arthur D. Lim concurring.

[3] *Id*. at 52-54.

[4] *Id*. at 68-81.

[5] The Citizenship Retention and Reacquisition Act of 2003.

took her Oath of Allegiance to the Republic of the Philippines and an Order of Approval of citizenship retention and reacquisition was issued in her favor. However, when Jalosjos filed her Certificate of Candidacy (COC) for Mayor of Dapitan City on October 1, 2012, she attached therein an Affidavit of Renunciation of her American citizenship that was subscribed and sworn to on **July 16, 2012** before Judge Veronica C. De Guzman-Laput of the Municipal Trial Court (MTC) of Manukan, Zamboanga del Norte.

Cardino averred that based on the certification from the Bureau of Immigration, Jalosjos left the Philippines for the USA on May 30, 2012 and she presented her US passport to the immigration authorities. Jalosjos then arrived back in the Philippines *via* Delta Airlines Flight No. 173 on July 17, 2012 at around 10:45 p.m. using her US passport. Cardino, therefore, argued that it was physically impossible for Jalosjos to have personally appeared in Manukan, Zamboanga del Norte before Judge De Guzman-Laput on July 16, 2012 to execute, sign and swear to her Affidavit of Renunciation.

Cardino alleged that Jalosjos' Affidavit of Renunciation was a falsified document that had no legal effect. As such, when Jalosjos filed her COC for Mayor of Dapitan City, she still possessed both Philippine and American citizenships and was therefore disqualified from running for any elective local position. Given that Jalosjos' COC was void *ab initio*, she was never a candidate for Mayor of Dapitan City. Cardino, thus, prayed for Jalosjos to be declared ineligible to run for Mayor of Dapitan City, that her proclamation be set aside, and that he be proclaimed as the duly-elected Mayor of Dapitan City.

Jalosjos answered[6] that the date of "16th day of July, 2012" was mistakenly indicated in the Affidavit of Renunciation instead of its actual execution date of **July 19, 2012**. Jalosjos claimed that it was on the latter date that she appeared before Judge De Guzman-Laput to execute a personal and sworn renunciation

[6] *Rollo*, pp. 317-328.

of her American citizenship. Jalosjos further contended that Cardino failed to show that Judge De Guzman-Laput denied having administered the oath that Jalosjos took as she renounced said citizenship. Jalosjos averred that she had no reason to make it appear that she renounced her American citizenship on July 16, 2012. The actual date of Jalosjos' renunciation of her American citizenship on July 19, 2012 allegedly complied with the requirements under Republic Act No. 9225 such that she remained eligible for the position of Mayor of Dapitan City.

Before the COMELEC Second Division, Cardino offered the following pieces of documentary evidence, among others, to prove that it was physically impossible for Jalosjos to have personally appeared, signed and sworn to her Affidavit of Renunciation on July 16, 2012: (a) a certification[7] from the Bureau of Immigration, reflecting Jalosjos' arrival in the country on July 17, 2012; (b) Jalosjos' vacation and sick leave applications[8] from May 29, 2012 up to July 18, 2012; and (c) a certification[9] from the Houston Eye Associates, showing that Jalosjos underwent a medical examination in Houston, Texas, USA on July 15, 2012.

On the other hand, Jalosjos offered, *inter alia*, the following evidence: (a) the judicial affidavit of Jalosjos,[10] which narrated the events involving the execution of her Affidavit of Renunciation on July 19, 2012; (b) the judicial affidavit of Eric Corro (Corro),[11] a member of the staff of Jalosjos who drafted the Affidavit of Renunciation; and (c) the letter complaint filed by Cardino against Judge De Guzman-Laput before the Office of the Court Administrator (OCA), docketed as OCA IPI No. 13-2627-MTJ, and its attachments.[12]

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[7] *Id*. at 95-97.

[8] *Id*. at 98-99.

[9] *Id*. at 100.

[10] *Id*. at 375-393.

[11] *Id*. at 407-422.

[12] *Id*. at 583-646.

On July 22, 2014, Judge De Guzman-Laput testified by deposition before the Provincial Election Supervisor in Dipolog City wherein she positively stated that it was on July 19, 2012 that Jalosjos personally appeared before her to subscribe to the Affidavit of Renunciation.[13]

In the assailed **Resolution dated December 16, 2014**, the COMELEC Second Division dismissed Cardino's petition for *quo warranto* in this wise:

> [Cardino] stated herein that [Jalosjos'] Affidavit of Renunciation is falsified and therefore invalid. The Affidavit of Renunciation was allegedly executed and subscribed before [Judge De Guzman-Laput] on July 16, 2012 or one day before respondent Jalosjos arrived in Manila.
>
> [Jalosjos] did not dispute the date indicated in the Affidavit of Renunciation. However, the said date was only a result of a clerical error as it was on July 19, 2012 that [Jalosjos] made a personal and sworn renunciation of all foreign citizenships before a public officer. The Affidavit of Renunciation cannot be considered falsified but only one containing clerical error in the date of execution.
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> x x x x x x x x x
>
> To the mind of this Commission, [Judge De Guzman-Laput] amply explained the discrepancy as to the date indicated in the affidavit. [Cardino] never refuted the assertion of clerical error. He only relied on the date of the affidavit which appears to be erroneous. The premise that the affidavit was subscribed to on July 16, 2012 is already debunked by the admission by the public officer authorized to administer oaths that there was a clerical error in the said Affidavit.
>
> We lend credence to the testimony of [Judge De Guzman-Laput] as she was the public officer who administered the oath. Furthermore, [Cardino] did not provide any assertion contradicting her. [Cardino] did not provide any proof on the insinuation that the Judge has motives to falsely testify in the case. [Cardino] failed to present even a single testimony to support his claim. The negative testimony that the renunciation did not take place cannot overcome the positive testimony that there was one. The testimony of [Judge De Guzman-Laput] goes

[13] *Id.* at 437-555.

to show that [Jalosjos] made a personal and sworn renunciation of any and all foreign citizenship[s]. The document Affidavit of Renunciation was the evidence and result of such. The eligibility of [Jalosjos] cannot just be negated by the clerical error in a document evidencing her renunciation of any and all foreign citizenships.

Lastly, [Jalosjos] obtained the plurality of votes for the position of mayor of Dapitan City in the May 13, 2013 Elections. This Commission cannot hold hostage the will of the electorate on the unproven allegation that a requirement was not met by [Jalosjos]. x x x.

x x x x x x x x x

WHEREFORE, the instant petition is hereby **DISMISSED** for lack of merit.[14]

Cardino moved for a reconsideration[15] of the above resolution but the same was denied in the assailed Resolution dated January 30, 2015 of the COMELEC *En Banc*.

In the petition before this Court, Cardino faults the COMELEC for refusing to declare the ineligibility of Jalosjos for her failure to comply with the requirement of Republic Act No. 9225 of making a personal and sworn renunciation of any and all foreign citizenships before any public officer authorized to administer an oath when she filed her COC for Mayor of Dapitan City on October 1, 2012. Cardino insists that Jalosjos' Affidavit of Renunciation was falsified and, therefore, void *ab initio* as it was physically impossible for her to have executed, signed and sworn to her Affidavit of Renunciation before Judge De Guzman-Laput on July 16, 2012. Consequently, there was no valid personal sworn renunciation of any and all foreign citizenships on the part of Jalosjos.

As to the testimonial evidence adduced by Jalosjos, Cardino brushed them aside as mere self-serving and inconsistent testimonies of biased witnesses. Cardino alleged that Judge De Guzman-Laput had every reason to falsely testify in favor of

[14] *Id.* at 63, 66-67.

[15] *Id.* at 204-238.

Jalosjos given the pendency of the administrative case that Cardino filed against Judge De Guzman-Laput before the Supreme Court (OCA IPI No. 13-2627-MTJ) involving the allegedly fraudulent execution of Jalosjos' Affidavit of Renunciation.

In her Comment[16] to the petition, Jalosjos maintains that her Affidavit of Renunciation is not falsified, but one that merely contains a clerical error in the date of execution. The same was actually executed and sworn to before Judge De Guzman-Laput on July 19, 2012 and it was through an error of the personnel who prepared the affidavit that the date of July 16, 2012 was indicated thereon. Jalosjos admits that she could not have executed the affidavit on July 16, 2012 as she was still in the USA on said date.

Jalosjos explains that after she arrived in Manila on July 17, 2012, she bought a ticket for a flight to Dipolog City in Zamboanga del Norte on July 19, 2012. Jalosjos then informed Corro that she wanted to appear before Judge De Guzman-Laput on July 19, 2012 so that her staff could make the necessary arrangements. Jalosjos did in fact fly from Manila to Dipolog City on board Cebu Pacific Flight No. 5J-703 and arrived there around 2:00 p.m. of July 19, 2012. At around 5:00 p.m. that day, Jalosjos personally appeared before Judge De Guzman-Laput at the latter's sala in the MTC of Manukan, Zamboanga del Norte and renounced her American citizenship by executing the Affidavit of Renunciation under oath.

Jalosjos stresses that Judge De Guzman-Laput herself confirmed that Jalosjos personally appeared on July 19, 2012 before the latter at her sala in the MTC of Manukan, Zamboanga del Norte to renounce her American citizenship. Cardino, on the other hand, failed to present any evidence that would controvert the testimonies of Jalosjos and her witnesses that she in fact appeared before Judge De Guzman-Laput on July 19, 2012 to personally renounce her American citizenship.

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[16] *Id.* at 267-316.

Jalosjos asserts that the mistake in the entry for the date of execution of the Affidavit of Renunciation did not negate the fact she still performed the necessary acts to renounce her American citizenship under oath before she filed her COC for Mayor in the May 13, 2013 Elections.

In its Comment[17] to the petition, the COMELEC argues that Cardino's petition for *quo warranto* was correctly dismissed as Jalosjos validly executed a personal and sworn renunciation of her American citizenship before Judge De Guzman-Laput prior to the filing of her COC. The COMELEC avers that the date July 16, 2012 written on Jalosjos' Affidavit of Renunciation was proven to be a mere clerical error. This fact was explained by Judge De Guzman-Laput when she testified that Jalosjos personally appeared before her and sworn to the Affidavit of Renunciation on July 19, 2012. The COMELEC posits that since Jalosjos won the elections, all doubts should be resolved in favor of her eligibility.

In his Consolidated Reply[18] to the above comments, Cardino stands pat on his position that Jalosjos' defense of clerical error cannot be used to override the established fact that it was physically impossible for Jalosjos to appear before Judge De Guzman-Laput on July 16, 2012 to renounce her American citizenship under oath.

After evaluating the facts and evidence of this case, the Court fails to find any action on the part of the COMELEC that constitutes grave abuse of discretion amounting to lack or excess of jurisdiction.

At the outset, the Court notes that term of the contested office in this case, *i.e.*, the mayorship of Dapitan City following the May 13, 2013 Elections, already expired on June 30, 2016. The issues regarding the eligibility of Jalosjos for the said position and Cardino's supposed right to be declared the winner for said term had been rendered moot and academic. However, we

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[17] *Id.* at 245-266.

[18] *Id.* at 780-789.

deem it appropriate to resolve the petition on the merits considering that litigation on the question of Jalosjos' citizenship is capable of repetition in that it is likely to recur if she would run again for public office.[19]

The present case arose from a petition for *quo warranto* filed by Cardino under Section 253 of the Omnibus Election Code, which pertinently reads:

> Sec. 253. *Petition for quo warranto*. - Any voter contesting the election of any Member of the Batasang Pambansa, regional, provincial, or city officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall file a sworn petition for *quo warranto* with the [COMELEC] within ten days after the proclamation of the results of the election.

According to Cardino, the inehgibility of Jalosjos stemmed from the fact that she was a dual citizen of the Philippines and the USA when she submitted her COC for Mayor in the May 13, 2013 elections. This is proscribed by Section 40 (d) of the Local Government Code, which reads:

> Sec. 40. *Disqualifications*. - The following persons are disqualified from running for any elective local position:
>
> x x x x x x x x x
>
> (d) Those with dual citizenship[.]

In *Sobejana-Condon v. Commission on Elections*,[20] the Court explained in detail the requirements that must be complied with under Republic Act No. 9225 before a person with dual citizenship can be qualified to run for any elective public office, to wit:

> [Republic Act] No. 9225 allows the retention and re-acquisition of Filipino citizenship for natural-born citizens who have lost their Philippine citizenship by taking an oath of allegiance to the Republic, thus:

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[19] See *Gayo v. Verceles*, 492 Phil. 592 (2005).

[20] 692 Phil. 407 (2012).

Section 3. ***Retention of Philippine Citizenship.*** -

Any provision of law to the contrary notwithstanding, natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

> "I _____ solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I imposed this obligation upon myself voluntarily without mental reservation or purpose of evasion."

Natural-born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.

The oath is an abbreviated repatriation process that restores one's Filipino citizenship and all civil and political rights and obligations concomitant therewith, subject to certain conditions imposed in Section 5, *viz*:

> **Sec. 5.** ***Civil and Political Rights and Liabilities*****. - Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:**
>
> (1) Those intending to exercise their right of suffrage must meet the requirements under Section 1, Article V of the Constitution, Republic Act No. 9189, otherwise known as "The Overseas Absentee Voting Act of 2003" and other existing laws;
>
> **(2) Those seeking elective public office in the Philippines shall meet the qualification for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the**

> **certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath;**
>
> x x x x x x x x x

The language of Section 5(2) is free from any ambiguity. In *Lopez v. COMELEC*, we declared its categorical and single meaning: **a Filipino American or any dual citizen cannot run for any elective public position in the Philippines unless he or she personally swears to a renunciation of all foreign citizenship at the time of filing the certificate of candidacy**. We also expounded on the form of the renunciation and held that to be valid, **the renunciation must be contained in an affidavit duly executed before an officer of the law who is authorized to administer an oath stating in clear and unequivocal terms that affiant is renouncing all foreign citizenship**.[21] (Citations omitted; emphasis supplied.)

In this case, the crux of the controversy involves the validity of Jalosjos' Affidavit of Renunciation. Cardino asserts the spuriousness of the affidavit based on the date of its supposed execution on July 16, 2012; whereas Jalosjos claims otherwise, insisting that while the affidavit was so dated, the same was merely an error as the affidavit was executed and subscribed to on July 19, 2012.

The COMELEC *En Banc* affirmed the ruling of the Second Division that the date of July 16, 2012 in the Affidavit of Renunciation was indeed a clerical error. The COMELEC Second Division gave greater weight to the evidence offered by Jalosjos, particularly the testimony of Judge De Guzman-Laput, who unequivocally stated that Jalosjos personally appeared before her sala on July 19, 2012 to subscribe to the Affidavit of Renunciation. The COMELEC Second Division found that Cardino failed to disprove Judge De Guzman-Laput's testimony.

After carefully reviewing the evidence on hand, the Court finds no proper reason to disturb the factual findings of the COMELEC. We reiterate our ruling in *Typoco v. Commission on Elections*[22] that:

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[21] *Id.* at 419-422.

[22] 628 Phil. 288 (2010).

The findings of fact of administrative bodies, when supported by substantial evidence, are **final and non-reviewable** by courts of justice. This principle is applied with greater force when the case concerns the COMELEC, because the framers of the Constitution intended to place the poll body — created and explicitly made independent by the Constitution itself— on a level higher than statutory administrative organs.

To repeat, the Court is not a trier of facts. The Court's function, as mandated by the Constitution, is merely to check whether or not the governmental branch or agency has gone beyond the constitutional limits of its jurisdiction, not that it simply erred or has a different view. Time and again, the Court has held that a petition for *certiorari* against actions of the COMELEC is confined only to instances of grave abuse of discretion amounting to patent and substantial denial of due process, because the COMELEC is presumed to be most competent in matters falling within its domain.[23] (Citations omitted.)

Notably, the Court arrived at a similar conclusion in resolving the administrative case filed by Cardino against Judge De Guzman-Laput relative to the incidents of this case. Thus, in our **Resolution**[24] **dated June 18, 2014 in OCA IPI No. 13-2627-MTJ**, we adopted and approved the following conclusions of law and recommendations of the OCA:

EVALUATION: On the issue of falsification, this Office finds for respondent Judge. There was really no reason why respondent Judge would have to falsify the date of the notarization of the Affidavit of Renunciation when indicating the actual date of notarization, 19 July 2012, would not have affected the validity of the affidavit. There was no deadline to reckon with since the Affidavit of Renunciation was required to be executed, at the latest, on the day of the filing of the Certificate of Candidacy and Jalosjos filed it later or on 1 October 2012. **In sum, the facts surrounding this particular issue lead to the conclusion that the date appearing in the Affidavit of Renunciation is the result of an honest mistake. Furthermore, respondent Judge could not have falsified the Affidavit of Renunciation just to do Jalosjos a favor. Respondent Judge was correct in saying that if there was anybody who benefited from**

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[23] *Id.* at 305-306.

[24] *Rollo*, OCA IPI No. 13-2627-MTJ, pp. 83-84.

her inadvertence, it was complainant since the mistake gave him a ground to question the validity of the election of Jalosjos as mayor of Dapitan City, Zamboanga [d]el Norte.

x x x x x x x x x

Also, it must be noted that the subject notarized document was used by Jalosjos only after several months after it was notarized, or in October 2012. Evidently, there was no urgency for the said document to be notarized in July 2012, thereby negating any probable impropriety with respect thereto.

RECOMMENDATION: It is respectfully recommended for the consideration of the Honorable Court that with respect to the instant complaint of Agapito J. Cardino relative to the violation of SC Circular No. 1-90, Judge Veronica C. DG-Laput, Municipal Trial Court, Manukan, Zamboanga del Norte, be **REMINDED** to be more circumspect in the performance of her duties, and be **STERNLY WARNED** that a repetition of the same or similar infraction shall be dealt with more severely.[25] (Citations omitted; emphasis supplied.)

All things considered, the Court affirms the findings of the COMELEC Second Division that Jalosjos' Affidavit of Renunciation is not a falsified document. As such, Jalosjos complied with the provisions of Section 5(2) of Republic Act No. 9225. By virtue thereof, Jalosjos was able to fully divest herself of her American citizenship, thus making her eligible to run for the mayorship of Dapitan City, Zamboanga del Norte.

WHEREFORE, the petition for *certiorari* is **DENIED**. The Resolution dated December 16, 2014 of the Commission on Elections Second Division and the Resolution dated January 30, 2015 of the Commission on Elections *En Banc* in EPC No. 2013-06 are hereby **AFFIRMED**. Costs against the petitioner.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Peralta, Bersamin, del Castillo, Mendoza, Reyes, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.*, concur.

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[25] *Id.* at 80-82.

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— The element of misappropriation is not indispensable in an administrative charge of grave misconduct; the lack of proof of overpricing or damage to the government does not *ipso facto* amount to a mitigated penalty. (*Id.*)

— The misconduct is considered to be grave if it also involves other elements such as corruption or the willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple; in grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule, must be evident. (*Id.*)

Insubordination — Defined as a refusal to obey some orders, which a superior officer is entitled to give and have obeyed; the term imports a willful or intentional disregard of the lawful and reasonable instructions of the employer. (Dept. of Health *vs.* Aquintey, G.R. No. 204766, Mar. 6, 2017) p. 763

— Under Sec. 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, which are the applicable Rules at the time of the commission of the offense, gross insubordination is a grave offense punishable by suspension from six months and one day to one year for the first offense. (*Id.*)

Public procurement — Public bidding is the primary process to procure goods and services for the government; a competitive public bidding aims to protect public interest by giving it the best possible advantages thru open competition; it is precisely the mechanism that enables the government agency to avoid or preclude anomalies in the execution of public contracts; strict observance of the rules, regulations, and guidelines of the bidding process is the only safeguard to a fair, honest and competitive public bidding; only in exceptional circumstances that R.A. No. 9184 and R.A. No. 7610 allow the procuring entity to forego the strict requirement of a public bidding. (Office of the Ombudsman-Mindanao *vs.* Martel, G.R. No. 221134, Mar. 1, 2017) p. 649

indicating that the accused had clung to his determination to commit the crime; and (3) the lapse of a sufficient length of time between the determination and execution to allow him to reflect upon the consequences of his act. (People *vs.* Macaspac *y* Isip, G.R. No. 198954, Feb. 22, 2017) p. 285

Treachery — Two conditions must concur in order for treachery to be appreciated, namely: *one*, the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and *two*, said means, methods or forms of execution were deliberately or consciously adopted by the assailant; treachery, whenever alleged in the information and competently and clearly proved, qualifies the killing and raises it to the category of murder. (People *vs.* Macaspac *y* Isip, G.R. No. 198954, Feb. 22, 2017) p. 285

ALIBI

Defense of — Alibi is the weakest of all defenses, for it is easy to contrive and difficult to disprove and for which reason, it is generally rejected; for the alibi to prosper, the accused must establish the following: (1) he was not at the *locus delicti* at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission; it must be supported by credible corroboration from disinterested witnesses, and if not, is fatal to the accused. (People *vs.* Donio *y* Untalan, G.R. No. 212815, Mar. 1, 2017) p. 578

— The uncorroborated alibi and denial of the accused must be brushed aside in light of the fact that the prosecution has sufficiently and positively ascertained his identity; it is only axiomatic that positive testimony prevails over negative testimony. (*Id.*)

AN ACT PREVENTING AND PENALIZING CARNAPPING (R. A. NO. 6539, AS AMENDED)

Carnapping **—** Elements of carnapping as defined and penalized under the R.A. No. 6539, as amended are the following:

(4) grossly immoral conduct; (5) conviction of a crime involving moral turpitude; (6) violation of the lawyers oath; (7) willful disobedience of any lawful order of a superior court; and (8) corruptly or willfully appearing as a lawyer for a party to a case without authority so to do; falsifying or simulating the court papers amounted to deceit, malpractice or misconduct in office, any of which was already a ground sufficient for disbarment under Sec. 27, Rule 38 of the Rules of Court. (*Id.*)

Liability of — The deliberate falsification of the court decision and the certificate of finality of the decision reflected a high degree of moral turpitude and made a mockery of the administration of justice in this country; lawyer thereby became unworthy of continuing as a member of the Bar. (Madria *vs.* Atty. Rivera, A.C. No. 11256, Mar. 7, 2017) p. 774

BILL OF RIGHTS

Freedom of religion — Establishment entails a positive action on the part of the State; accommodation, on the other hand, is passive; in the former, the State becomes involved through the use of government resources with the primary intention of setting up a state religion; in the latter, the State, without being entangled, merely gives consideration to its citizens who want to freely exercise their religion. (*Re*: Letter of Tony Q. Valenciano, Holding of Religious Rituals at the Hall of Justice Building in Quezon City, A.M. No. 10-4-19-SC, Mar. 7, 2017) p. 822

— In order to give life to the constitutional right of freedom of religion, the State adopts a policy of accommodation; accommodation is a recognition of the reality that some governmental measures may not be imposed on a certain portion of the population for the reason that these measures are contrary to their religious beliefs; as long as it can be shown that the exercise of the right does not impair the public welfare, the attempt of the State to regulate or prohibit such right would be an unconstitutional encroachment. (*Id.*)

— The "compelling state interest" serves the purpose of revering religious liberty while at the same time affording protection to the paramount interests of the state; only the gravest abuses, endangering paramount interests can limit this fundamental right; a mere balancing of interests which balances a right with just a colorable state interest is therefore not appropriate; instead, only a compelling interest of the state can prevail over the fundamental right to religious liberty; the test requires the state to carry a heavy burden, a compelling one, for to do otherwise would allow the state to batter religion, especially the less powerful ones until they are destroyed; in determining which shall prevail between the state's interest and religious liberty, reasonableness shall be the guide. (*Id.*)

— The non-establishment clause reinforces the wall of separation between church and state; it simply means that the State cannot set up a church; nor pass laws which aid one religion, aid all religion or prefer one religion over another nor force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion; that the state cannot punish a person for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance; that no tax in any amount, large or small, can be levied to support any religious activity or institution whatever they may be called or whatever form they may adopt or teach or practice religion; that the state cannot openly or secretly participate in the affairs of any religious organization or group and vice versa. (*Id.*)

— The right to religious profession and worship has a two-fold aspect, freedom to believe and freedom to act on one's beliefs; the first is absolute as long as the belief is confined within the realm of thought; the second is subject to regulation where the belief is translated into external acts that affect the public welfare. (*Id.*)

must be proved: (1) that the accused was in possession of the object identified as a prohibited or regulated drug; (2) that the drug possession was not authorized by law; and (3) that the accused freely and consciously possessed the drug. (People *vs.* Arce *y* Camargo, G.R. No. 217979, Feb. 22, 2017) p. 373

Illegal sale of dangerous drugs — In the prosecution of the crime of selling a dangerous drug, the following elements must be proven, to wit: (1) the identities of the buyer, seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. (People *vs*. Barte y Mendoza, G.R. No. 179749, Mar. 1, 2017) p. 533

— On top of the elements of possession or illegal sale, the fact that the substance possessed or illegally sold was the very substance presented in court must be established with the same exacting degree of certitude as that required sustaining a conviction; the prosecution must account for each link in the chain of custody of the dangerous drug, from the moment of seizure from the accused until it was presented in court as proof of the *corpus delicti*. (*Id.*)

— To secure a conviction for illegal sale of dangerous drugs under Sec. 5, Art. II of R.A. No. 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefore; what is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused. (People *vs.* Ismael *y* Radang, G.R. No. 208093, Feb. 20, 2017) p. 21

Illegal sale of marijuana — In every prosecution for the illegal sale of marijuana, the following elements must be proved: (1) the identity of the buyer and the seller; (2) the object and the consideration; and (3) the delivery of the thing

requisites are: (1) the parties are the landowner and the tenant; (2) the subject is agricultural land; (3) there is consent; (4) the purpose is agricultural production; (5) there is personal cultivation; and (6) there is sharing of harvests. (Union Bank of the Philippines *vs.* Hon. Regional Agrarian Reform Officer, G.R. No. 200369, Mar. 1, 2017) p. 545

DUE PROCESS

Administrative due process — A decision rendered without due process is void *ab initio* and may be attacked directly or collaterally; a decision is void for lack of due process if, as a result, a party is deprived of the opportunity to be heard. (Office of the Ombudsman *vs.* Conti, G.R. No. 221296, Feb. 22, 2017) p. 384

— Procedural due process is that which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial; it contemplates notice and opportunity to be heard before judgment is rendered affecting one's person or property; in administrative proceedings, due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend oneself. (*Id.*)

EMPLOYER-EMPLOYEE RELATIONSHIP

Existence of — In determining the existence of an employer-employee relationship, the following elements are considered: (1) the selection and engagement of the workers; (2) the power to control the worker's conduct; (3) the payment of wages by whatever means; and (4) the power of dismissal. (Lu *vs.* Enopia, G.R. No. 197899, Mar. 6, 2017) p. 725

— No particular form of evidence is required to prove the existence of an employer-employee relationship; any competent and relevant evidence to prove the relationship may be admitted. (*Id.*)

— The control test merely calls for the existence of the right to control, and not necessarily the exercise thereof;

— In termination cases, burden of proof rests upon the employer to show that the dismissal is for a just and valid cause and failure to do so would necessarily mean that the dismissal was illegal. (*Id.*)

Loss of trust and confidence — A managerial employee could be terminated on the ground of loss of confidence by mere existence of a basis for believing that he had breached the trust of his employer; proof beyond reasonable doubt is not required; it would already be sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the concerned employee is responsible for the purported misconduct and the nature of his participation therein; this distinguishes a managerial employee from a fiduciary rank-and-file where loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertion and accusation by the employer will not be sufficient. (PJ Lhuillier, Inc. *vs.* Camacho, G.R. No. 223073, Feb. 22, 2017) p. 413

— For loss of trust and confidence to be a valid ground for termination, the employer must establish that: (1) the employee holds a position of trust and confidence; and (2) the act complained against justifies the loss of trust and confidence. (*Id.*)

— The law contemplates two (2) classes of positions of trust; the first class consists of managerial employees; they are those who are vested with the power or prerogative to lay down management policies and to hire, transfer, suspend, layoff, recall, discharge, assign or discipline employees or effectively recommend such managerial actions; the second class consists of cashiers, auditors, property custodians, etc. who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property. (*Id.*)

Resignation — For the resignation of an employee to be a viable defense in an action for illegal dismissal, an employer must prove that the resignation was voluntary

represents, as it is evident that the gravity of the damage resulting therefrom would not be the same. (*Id*.)

— Fraudulent intent, being a state of mind, can only be proved by unguarded expressions, conduct and circumstances, and may be inferred from facts and circumstances that appear to be undisputed. (*Id*.)

— The elements of *estafa* by means of deceit are as follows: a) that there must be a false pretense, fraudulent act or fraudulent means; b) that such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; c) that the offended party must have relied on the false pretense, fraudulent act or fraudulent means, that is, he was induced to part with his money or property because of the fraudulent act or fraudulent means; and d) that as a result thereof, the offended party suffered damage. (*Id*.)

— The elements of *estafa* in general are: 1) that the accused defrauded another (a) by *abuse of confidence* or (b) by means of *deceit*; and 2) that *damage* or *prejudice* capable of pecuniary estimation is caused to the offended party or third person; the first element covers the following ways of committing *estafa*: 1) with unfaithfulness or abuse of confidence; 2) by means of false pretenses or fraudulent acts; and 3) through fraudulent means; the first way of committing *estafa* is known as *estafa* with abuse of confidence, while the second and the third ways cover by means of deceit. (*Id*.)

— To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right; in proving the element of conversion or misappropriation, a legal presumption of misappropriation arises when the accused fails to deliver the proceeds of the sale or to return the items to be sold and fails to give an account of their whereabouts. (Gamaro *vs.* People, G.R. No. 211917, Feb. 27, 2017) p. 483

EVIDENCE

FLIGHT

Flight of an accused — An indication of guilt or of a guilty mind. (People *vs.* Donio *y* Untalan, G.R. No. 212815, Mar. 1, 2017) p. 578

HUMAN RELATIONS

Unjust enrichment — There is unjust enrichment under Art. 22 of the Civil Code when (1) a person is unjustly benefited, and (2) such benefit is derived at the expense of or with damages to another; the principle of unjust enrichment essentially contemplates payment when there is no duty to pay, and the person who receives the payment has no right to receive it. (Osmeña-Jalandoni *vs.* Encomienda, G.R. No. 205578, Mar. 1, 2017) p. 566

— There is unjust enrichment when a person unjustly retains a benefit to the loss of another or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. (Gaisano *vs.* Dev't. Insurance and Surety Corp., G.R. No. 190702, Feb. 27, 2017) p. 450

INFORMATION

Sufficiency of — The constitutional provision requiring the accused to be informed of the nature and cause of the accusation against him is for him to adequately and responsively prepare his defense; the prosecutor is not required, however, to be absolutely accurate in designating the offense by its formal name in the law; what determines the real nature and cause of the accusation against an accused is the actual recital of facts stated in the information or complaint and not the caption or preamble of the information or complaint nor the specification of the provision of law alleged to have been violated, they being conclusions of law. (Gamaro *vs.* People, G.R. No. 211917, Feb. 27, 2017) p. 483

— The trial court has the discretion to read the information in the context of the facts alleged therein. (*Id.*)

been determined at the time of the engagement of the employee; to be considered as project-based, the employer has the burden of proof to show that: (*a*) the employee was assigned to carry out a specific project or undertaking; and (*b*) the duration and scope of which were specified at the time the employee was engaged for such project or undertaking. (*Id.*)

— Project employment should not be confused and interchanged with fixed-term employment; the decisive determinant in project employment is the activity that the employee is called upon to perform and not the day certain agreed upon by the parties for the commencement and termination of the employment relationship; an employment contract that does not mention particular dates that establish the specific duration of the project does not preclude one's classification as a project employee. (*Id.*)

LEGISLATIVE DEPARTMENT

Powers — The authority to prescribe qualifications for positions in the government is lodged in Congress as part of its plenary legislative power to create, abolish and modify public offices to meet societal demands; from this authority emanates the right to change the qualifications for existing statutory offices. (Career Executive Service Board *vs.* Civil Service Commission, G.R. No. 197762, Mar. 7, 2017) p. 967-968

LEGISLATURE

Appropriation — No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium. (*Re*: Letter of Tony Q. Valenciano, Holding of Religious Rituals at the Hall of

is also applicable to seafarers. (Tradephil Shipping Agencies, Inc.,/Ortega *vs.* Dela Cruz, G.R. No. 210307, Feb. 22, 2017) p. 338

— In case of disagreement between the findings of the company-designated physician and the seafarer's physician, the parties may agree to jointly refer the matter to a third doctor whose decision shall be final and binding on them. (*Id.*)

— It is the company-designated doctor who is given the responsibility to make a conclusive assessment on the degree of the seafarer's disability and his capacity to resume work within 120/240 days; the parties, however, are free to disregard the findings of the company doctor, as well as the chosen doctor of the seafarer, in case they cannot agree on the disability gradings issued and jointly seek the opinion of a third-party doctor pursuant to Sec. 20 (A)(3) of the 2010 POEA-SEC. (Sunit *vs.* OSM Maritime Services, Inc., G.R. No. 223035, Feb. 27, 2017) p. 505

— Non-referral to a third physician, whose findings shall be considered as final and binding, constitutes a breach of the POEA-SEC; the referral to a third doctor is a mandatory procedure which necessitates from the provision that it is the company-designated doctor whose assessment should prevail; the company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for the referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties. (*Id.*)

— Permanent disability is defined as the inability of a worker to perform his job for more than 120 days (or 240 days, as the case may be), regardless of whether or not he loses the use of any part of his body; total disability means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do. (*Id.*)

same; the claimant/complainant has the burden of proving ownership over the registered land. (*Id*.)

— The mere possession of a land for thirty (30) years does not automatically divest the land of its public character. (*Id*.)

ROBBERY IN A BAND

Commission of — Robbery is the taking, with the intent to gain, of personal property belonging to another by use of force, violence or intimidation; under Art. 294 (5) in relation to Art. 295 and Art. 296 of the Revised Penal Code, robbery in band is committed when four (4) or more malefactors take part in the robbery; all members are punished as principals for any assault committed by the band, unless it can be proven that the accused took steps to prevent the commission of the crime. (Amparo *y* Ibañez *vs.* People, G.R. No. 204990, Feb. 22, 2017) p. 297

SEPARATION OF CHURCH AND STATE

Principle of — The State still recognizes the inherent right of the people to have some form of belief system, whether such may be belief in a Supreme Being, a certain way of life or even an outright rejection of religion; religious freedom, however, as a constitutional mandate is not inhibition of profound reverence for religion and is not a denial of its influence in human affairs; religion as a profession of faith to an active power that binds and elevates man to his Creator is recognized. (*Re*: Letter of Tony Q. Valenciano, Holding of Religious Rituals at the Hall of Justice Building in Quezon City, A.M. No. 10-4-19-SC, Mar. 7, 2017) p. 822

STATUTES

Interpretation of — Under the principle of *noscitur a sociis*, where a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of words in which it is found or with which it is associated; this is because a word or phrase in a

Commission on Elections *En Banc*, G.R. No. 216637, Mar. 7, 2017) p. 1053

WRIT OF KALIKASAN

Principle of — An extraordinary remedy covering environmental damage of such magnitude that will prejudice the life, health or property of inhabitants in two or more cities or provinces; it is designed for a narrow but special purpose: to accord a stronger protection for environmental rights, aiming, among others, to provide a speedy and effective resolution of a case involving the violation of one's constitutional right to a healthful and balanced ecology that transcends political and territorial boundaries, and to address the potentially exponential nature of large-scale ecological threats. (Segovia *vs.* Climate Change Commission, G.R. No. 211010, Mar. 7, 2017) p. 1019-1020

— For a writ of *kalikasan* to issue, the following requisites must concur: 1. there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology; 2. the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and 3. the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces; a party claiming the privilege for the issuance of a writ of *kalikasan* has to show that a law, rule or regulation was violated or would be violated. (*Id*.)

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