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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 193828. March 27, 2017]

REPUBLIC OF THE PHILIPPINES, represented by the MANILA INTERNATIONAL AIRPORT AUTHORITY (MIAA), *petitioner, vs.* **HEIRS OF ELADIO SANTIAGO c/o SABAS SANTIAGO AND JERRY T. YAO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; A PETITION FOR REVIEW UNDER RULE 45; COVER ONLY QUESTIONS OF LAW; EXCEPTIONS.— Settled is the rule that this Court is not a trier of facts, and it is not its function to examine, review, or evaluate the evidence all over again. A petition for review on *certiorari* under Rule 45 of the Rules of Court should cover only questions of law. This rule equally applies in expropriation cases. Moreover, the factual findings of the CA affirming those of the trial court are final and conclusive. They cannot be reviewed by this Court, save only in the following circumstances: (1) when the factual conclusion is a finding grounded entirely on speculations, surmises and conjectures; (2) when the inference is manifestly mistaken, absurd or impossible; (3) when there is a 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 the CA went beyond the issues of the

case in making its findings, which are further contrary to the admissions of both the appellant and the appellee; (7) when the CA's findings are contrary to those of the trial court; (8) when the conclusions do not cite the specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not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 respondents; and (10) when the CA's findings of fact, supposedly premised on the absence of evidence, are contradicted by the evidence on record.

2. POLITICAL LAW; LAW OF ACQUISITION OF RIGHT-OF-WAY, SITE OR LOCATION FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS (RA 8974); STANDARDS FOR THE ASSESSMENT OF THE VALUE OF LAND SUBJECT OF EXPROPRIATION PROCEEDINGS ON NEGOTIATED SALE.— [T]he standards provided under Republic Act No. 8974 (*RA 8974*), otherwise known as *An Act to Facilitate the Acquisition of Right-Of-Way, Site or Location For National Government Infrastructure Projects and For Other Purposes*, in determining just compensation, particularly Section 5 thereof, provides as follows: SECTION 5. Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale. – In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards: (a) The classification and use for which the property is suited; (b) The developmental costs for improving the land; (c) The value declared by the owners; (d) The current selling price of similar lands in the vicinity; (e) The reasonable disturbance compensation for the removal and/or demolition of certain improvements on the land and for the value of the improvements thereon; (f) The size, shape or location, tax declaration and zonal valuation of the land; (g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and (h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible. Consistent with the above standards set by law, it has been this Court's consistent ruling that just compensation cannot be arrived at arbitrarily. As enumerated above, several factors must be considered, such

as, but not limited to, acquisition cost, current market value of like properties, tax value of the condemned property, its size, shape, and location.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EMINENT DOMAIN; DETERMINATION OF JUST COMPENSATION IS A JUDICIAL FUNCTION.— [T]he determination of just compensation in eminent domain cases is a judicial function and that any valuation for just compensation laid down in the statutes may serve only as a guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount. Thus, this Court has held that the courts are not bound to consider the standards laid down under Section 5 of RA 8974 because the exact wording of the said provision is that "in order to facilitate the determination of just compensation, the courts may consider" them. The use of the word "may" in the provision is construed as permissive and operating to confer discretion. In the absence of a finding of arbitrariness, abuse or serious error, the exercise of such discretion may not be interfered with. x x x At this point, it bears to reiterate that just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" and to convey, thereby, the idea that the equivalent to be rendered for the property to be taken shall be substantial, full and ample.

4. ID.; ID.; ID.; ID.; THE POTENTIAL USES OF THE PROPERTY SUCH AS ITS CONDITION AND SURROUNDINGS, ITS IMPROVEMENTS AND CAPABILITIES, SHOULD BE CONSIDERED IN ARRIVING AT THE FAIR MARKET VALUE OF A PROPERTY.— "Highest and best use" is defined as the reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. This Court has held that among the factors to be considered in arriving at the fair market value of a property is its potential use. Also, it has been held that a property's potential use, or its adaptability for conversion in the future, may be considered in cases where

there is a great improvement in the general vicinity of the expropriated property, although it should never control the determination of just compensation. x x x As this Court has held, all the facts as to the condition of the property and its surroundings, as well as its improvements and capabilities, should be considered. Certainly, the potential use or uses of the subject properties would affect their fair market value.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

San Buenaventura Law Offices for respondents heirs of Eladio Santiago.

Emerito M. Salva for respondent Jerry T. Yao.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking the reversal and setting aside of the Decision[1] and Resolution[2] of the Court of Appeals (*CA*), dated April 27, 2010 and September 15, 2010, respectively, in CA-G.R. CV No. 89842. The assailed Decision dismissed the appeal filed by herein petitioner and affirmed the September 28, 2006 Order[3] of the Regional Trial Court (*RTC*) of Parañaque City, Branch 257, in Civil Case No. 02-0041 which fixed the just compensation for the properties of herein respondents that were actually expropriated by petitioner for the installation of MIAA's runway approach lights.

The pertinent factual and procedural antecedents of the case are as follows:

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[1] Penned by Associate Estela M. Perlas-Bernabe (now a member of this Court), with the concurrence of Associate Justices Mario V. Lopez and Elihu A. Ybañez, Annex "A" to Petition, *rollo* pp. 64-70.

[2] Annex "B" to Petition, *id.* at 71-72.

[3] Penned by Judge Rolando G. How; Annex "T" to Petition, *id.* at 222-226.

On January 30, 2002, herein petitioner filed with the RTC of Parañaque City a Complaint[4] for the expropriation of fragments of two parcels of land in Parañaque City for the purpose of installing runway approach lights spanning nine hundred (900) meters. The properties sought to be expropriated are: (1) a 180-square-meter portion of Lot 4174 located at Barangay San Dionisio which has an aggregate area of 2,151 square meters, covered by Original Certificate of Title (*OCT*) No. 189 registered in the name of a certain Eladio Santiago but is now owned by herein respondents who are his heirs (*heirs of Santiago*), and (2) a 540-square-meter portion of Lot No. 5012 located at Barangay La Huerta, with a total area of 68,778 square meters, covered by Transfer Certificate of Title (*TCT*) No. D-005-01300 registered in the names Antonio, Patricio and Cecilia, all surnamed Bernabe, but was subsequently sold to and now owned by Titan Construction Corporation, represented by herein respondent Jerry Yao (*Yao*).

In its Complaint, petitioner contended that it was compelled to institute the action for expropriation because several meetings were held between the parties concerning the proposed acquisition of the needed areas but no agreement was reached because respondents wanted petitioner to buy their entire properties; however, the total areas of which are beyond what were needed for the project. Petitioner also alleged that under Ordinance No. 96-16 of Parañaque City, the zonal value of the subject lots is fixed at ₱3,000.00 per square meter.

In their Answer,[5] respondents heirs of Santiago aver that: they are willing to sell provided the entire lot covered by OCT No. 189 be expropriated because the remaining portion shall be rendered useless after the completion of the project; the zonal valuation of the property by the Bureau of Internal Revenue

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[4] Annex "D" to Petition, *id*. at 75-81.

[5] Annex "F" to Petition, *id*. at 136-140.

(*BIR*) per Department Order No. 16-98, dated February 2, 1998, is not less than ₱30,000.00 per square meter, and petitioner should also be made to pay consequential damages, interest, attorney's fees and costs of suit.

On his part, respondent Yao, in his Answer,[6] asserted that the expropriation sought by petitioner is improper, invalid and inappropriate as there are still other probable and better properties which can serve the purpose alleged in the complaint; assuming the expropriation will push through, respondent should be made to pay not only the 540-square meter portion sought to be expropriated but also the Northwest and Southeast areas lying on both sides of the strip which would be rendered useless because of the risk caused by departing and landing aircrafts as well as the danger produced by the noise and air pressure generated by the aircrafts; the fair market value of the area to be expropriated, including the other affected areas, should not be less than ₱10,000.00 per square meter. Yao also interposed a counterclaim contending that since the expropriation sought will divide the entire property into separate areas, petitioner should be compelled to pay an amount of ₱35,000,000.00 for building a bridge over the Parañaque River to serve as the only means of going into and coming out of the Northwest area of the property; Yao also asked for the payment of moral and temperate damages, attorney's fees and litigation expenses.

Pursuant to the provisions of Section 2, Rule 67 of the Rules of Court, the RTC issued an Order[7], dated May 7, 2002, directing petitioner to deposit the amount of ₱2,160,000.00 with the Land Bank of the Philippines, Sucat Branch as payment for the provisional value of the property which is a prerequisite to the issuance of a writ of possession in its favor.

After petitioner's compliance with the above Order, the RTC issued another Order,[8] dated May 24, 2002, directing the court's

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[6] Annex "E" to Petition, *id*. to 128-135.

[7] Annex "G" to Petition, *id*. at 152.

[8] Annex "H" to Petition, *id.* at 153-154.

Deputy Sheriff to place petitioner in possession of the subject properties.

In its Orders dated June 11, 2002[9] and June 14, 2002,[10] the RTC allowed respondent Yao to withdraw the total amount of ₱1,620,000.00, which corresponds to its share in the deposit made by petitioner.

In the same manner, the RTC, in its Order[11] dated August 29, 2002, allowed respondents heirs of Santiago to withdraw their share of ₱540,000.00 from the same deposit made by petitioner.

Meanwhile, in compliance with the Order[12] of the RTC dated August 19, 2002, the parties submitted the names of the commissioners of their choice for the purpose of determining the just compensation for the property sought to be expropriated. In the same Order, the RTC designated the City Assessor of Parañaque as Chairman of the commissioners.

Thereafter, the commissioners submitted their respective appraisal reports indicating therein the amounts which were suggested as just compensation for the subject properties, to wit:

Royal Asia Appraisal Corporation (*RAAC*), chosen by herein petitioner – PhP2,500.00 per square meter for both properties;

Justiniano C. Montano IV, chosen by respondent Yao – PhP15,000.00 per square meter;

Vic. T. Salinas Realty and Consultancy Services, chosen by respondents heirs of Santiago – PhP12,500.00 per square meter; and

City Assessor of Parañaque – PhP5,900.00 per square meter for both properties.

However, the group of commissioners failed to reach a consensus as to the amount of just compensation for the subject properties. Thus, this issue was submitted for resolution to the RTC.

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[9] Annex "I" to Petition, *id*. at 155.

[10] Annex "J" to Petition, *id*. at 156.

[11] Annex "L" to Petition, *id*. at 160.

[12] Annex "K" to Petition, *id*. at 157-158.

On September 28, 2006, the RTC issued its subject Order disposing as follows:

> WHEREFORE, for the payment of just compensation on the properties actually expropriated, the Republic of the Philippines, represented by the Manila International Airport Authority (*MIAA*), is held liable to the heirs of Eladio Santiago the amount of ₱4,500.00 per square meter multiplied by the expropriated area of 180 square meters and to Jerry Yao the amount of ₱5,900.00 per square meter multiplied by the expropriated area of 540 square meters. Since the heirs of Eladio Santiago had already received the sum of ₱540,000.00 and Jerry Yao the sum of ₱1,287,360.00 from the Republic of the Philippines, represented by MIAA, the said amounts shall be deducted from the payments.
>
> SO ORDERED.[13]

Petitioner filed a Motion for Reconsideration[14] of the above Order, but the RTC denied it in its Order[15] dated March 28, 2007.

Petitioner, then, filed an appeal with the CA. Subsequently, on April 27, 2010, the CA rendered its assailed Decision dismissing petitioner's appeal and affirming the September 28, 2006 Order of the RTC.

Petitioner's subsequent Motion for Reconsideration was denied by the CA in its Resolution dated September 15, 2010.

Hence, the instant petition for review on *certiorari* based on the following grounds:

I

The Court of Appeals committed serious error of law in affirming the findings of the expropriation court relative to the latter's determination of just compensation for the properties of respondents, thereby ignoring the standards provided under Section 5 of RA 8974 for the determination of just compensation

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[13] *Id*. at 226.

[14] Annex "U" to Petition, *id*. at 227-231.

[15] Annex "X" to Petition, *id*. at 240.

II

The Court of Appeals committed serious error of law in sustaining the ruling of the expropriation court that the recommendation of petitioner's appraiser, Royal Asia Appraisal Corporation, lacks sufficient basis to support its conclusion.[16]

The petition lacks merit.

At the outset, the Court deems it proper to dispose of the factual matters raised in the instant petition as they call for a recalibration or reevaluation of the evidence submitted by the parties.

Settled is the rule that this Court is not a trier of facts, and it is not its function to examine, review, or evaluate the evidence all over again.[17] A petition for review on *certiorari* under Rule 45 of the Rules of Court should cover only questions of law.[18] This rule equally applies in expropriation cases.[19]

Moreover, the factual findings of the CA affirming those of the trial court are final and conclusive. They cannot be reviewed by this Court, save only in the following circumstances: (1) when the factual conclusion is a finding grounded entirely on speculations, surmises and conjectures; (2) when the inference is manifestly mistaken, absurd or impossible; (3) when there is a 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 the CA went beyond the issues of the case in making its findings, which are further contrary to the admissions of both the appellant and the appellee; (7) when the CA's findings are contrary to those of the trial court; (8)

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[16] *Rollo*, pp. 32-33.

[17] *Carbonell v. Carbonell-Mendes,* G.R. No. 205681, July 1, 2015, 761 SCRA 260, 268.

[18] *Id*.

[19] *Republic of the Philippines v. C.C. Unson Company, Inc.,* G.R. No. 215107, February 24, 2016; *Republic of the Philippines v. Heirs of Spouses Pedro Bautista and Valentina Malabanan*, 702 Phil. 284, 297 (2013); *Republic v. Spouses Tan, et al.,* 676 Phil. 337, 351 (2011).

when the conclusions do not cite the 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 respondents; and (10) when the CA's findings of fact, supposedly premised on the absence of evidence, are contradicted by the evidence on record.[20] While petitioner contends that the CA "manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion," which is also a recognized exception, the Court finds that it (petitioner) failed to establish that the present case falls under the above-enumerated exceptions. Thus, absent competent proof that the RTC and the CA committed error in establishing the facts concerning the issue of just compensation and in drawing conclusions from them, the Court finds no cogent reason to deviate from such findings and conclusions.

Based on the above discussions alone, the Court finds that the instant petition is dismissible.

In the same manner, the Court finds that even the sole legal issue, which arises by reason of petitioner's averments in the instant petition, lacks merit for reasons similar to those discussed above.

In petitioner's first ground, the issue raised is whether or not the RTC and the CA took into consideration the standards provided under Republic Act No. 8974 (*RA 8974*), otherwise known as *An Act to Facilitate the Acquisition of Right-Of-Way, Site or Location For National Government Infrastructure Projects and For Other Purposes*, in determining just compensation, particularly Section 5 thereof, which provides as follows:

> SECTION 5. Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale. – In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:

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[20] *Republic of the Philippines v. Tan, et al., supra; Philippine National Oil Company v. Maglasang, et al.,* 591 Phil. 534, 545 (2008).

(a) The classification and use for which the property is suited;
(b) The developmental costs for improving the land;
(c) The value declared by the owners;
(d) The current selling price of similar lands in the vicinity;
(e) The reasonable disturbance compensation for the removal and/or demolition of certain improvements on the land and for the value of the improvements thereon;
(f) The size, shape or location, tax declaration and zonal valuation of the land;
(g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and
(h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

Consistent with the above standards set by law, it has been this Court's consistent ruling that just compensation cannot be arrived at arbitrarily.[21] As enumerated above, several factors must be considered, such as, but not limited to, acquisition cost, current market value of like properties, tax value of the condemned property, its size, shape, and location.[22]

In consonance with the above rule, it has also been repeatedly emphasized that the determination of just compensation in eminent domain cases is a judicial function and that any valuation for just compensation laid down in the statutes may serve only as a guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount.[23] Thus, this Court has held that the courts are not bound to consider the standards laid down under Section 5 of RA 8974

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[21] *National Power Corporation v. Spouses Zabala and Baylon,* 702 Phil. 491, 501 (2013).

[22] *Id*.

[23] *Id.* at 500; *National Power Corporation v. Tuazon, et al.,* 668 Phil. 301, 313 (2011); *National Power Corporation v. Bagui, et al.,* 590 Phil. 424, 432 (2008).

because the exact wording of the said provision is that "in order to facilitate the determination of just compensation, the courts may consider" them.[24] The use of the word "may" in the provision is construed as permissive and operating to confer discretion.[25] In the absence of a finding of arbitrariness, abuse or serious error, the exercise of such discretion may not be interfered with.[26] In the present case, the Court finds no arbitrariness, abuse or serious error in the findings of the RTC. Considering that the determination of the amount of just compensation by the RTC was even affirmed by the CA, which had the opportunity to examine the facts anew, this Court sees no reason to disturb it.

In any case, even assuming, *arguendo*, that the instant case necessitates the review of the evidence presented *vis-a-vis* the standards set under the abovequoted Section 5 of RA 8974, this Court, nonetheless finds that the RTC and the CA did not ignore the standards set by law and did not commit error in arriving at their findings and conclusions as to the amount of just compensation due to respondents.

As to the classification and use for which the subject properties are suited, both the RTC and the CA found that they were primarily agricultural in nature as they were used as salt beds and fishponds. This finding is supported by the appraisal report of the commissioners of herein petitioner and respondents.[27]

Nonetheless, the parties' commissioners were all in agreement that the subject properties' immediate vicinity is booming with commercial activity, which shows the potential use or the use for which the property is best suited.[28] In particular, RAAC's Appraisal Report noted that "beside the subject property is the

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[24] *Republic of the Philippines v. Heirs of Spouses Pedro Bautista and Valentina Malabanan, supra* note 19, at 298.

[25] *Id*.

[26] *Id.*

[27] See Appraisal Reports of Commissioners, records, Vol. IV.

[28] *Id*.

Global Airport Business Park intended for warehousing and display, which cater[s to] local and foreign locators."[29] Also, the commissioners listed some of the commercial establishments within the vicinity such as the Olivares Plaza, MIAA Complex, Parañaque Fresh Food Terminal, Airport Citimall, among others.[30] Based on their assessment in their respective Appraisal Reports, respondents' commissioners averred that commercial and light industrial development represent the highest and best use of the disputed lots, while RAAC does not discount the possibility that these properties may be devoted to other uses other than agricultural. "Highest and best use" is defined as the reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value.[31] This Court has held that among the factors to be considered in arriving at the fair market value of a property is its potential use.[32] Also, it has been held that a property's potential use, or its adaptability for conversion in the future, may be considered in cases where there is a great improvement in the general vicinity of the expropriated property, although it should never control the determination of just compensation.[33] In fact, the Appraisal Reports of the parties' commissioners clearly indicate that at the time when the subject properties are being expropriated, the locality where they are found already abounds with commercial and industrial activities. Aside from that, the commissioners also noted that the subject properties are also near developed residential areas such as the Multinational Village.[34] As this Court has held, all the facts as to the condition

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[29] *Id.*

[30] *Id.*

[31] *Republic v. Department of Transportation and Communications, et al.,* G.R. Nos. 181892, 209917, 209696 and 209731, September 8, 2015.

[32] *Republic v. Asia Pacific Integrated Steel Corporation,* 729 Phil. 402, 417 (2014).

[33] *Land Bank of the Philippines v. Montinola-Escarilla and Co., Inc.,* 687 Phil. 245, 251 (2012); *Land Bank of the Philippines v. Livico*, 645 Phil. 337, 357 (2010).

[34] *Supra* note 27.

of the property and its surroundings, as well as its improvements and capabilities, should be considered.[35] Certainly, the potential use or uses of the subject properties would affect their fair market value.

Anent the other factors enumerated under Section 5 of RA 8974, the RTC correctly found that the parties' commissioners uniformly used the Market Data Approach.

With respect to petitioner, it quoted the report of its chosen commissioner, RAAC, which described the subject properties as interior lots, and explained as follows:

x x x x x x x x x

x x x In this approach, the value of the land is based on sales and listings of comparable properties registered in the vicinity. The technique of this approach requires the establishing of comparable properties by reducing reasonable comparative sales and listings to a common denominator.

This is done by adjusting the differences between the subject property and those actual sales and listings regarded as comparables. The properties used as bases of comparison are situated within the immediate vicinity of the subject property. Our comparison was premised on the factors of location, characteristics of the lot, time element, quality, and prospective use. We have searched the market for comparable properties and gathered the following:[36]

RAAC then made a list of comparable properties, to wit:

LISTINGS:

1. Currently, an interior lot having an area of 30,000 sq. m., more or less, located at the back of Green Heights, Brgy. Sucat, Paranaque City, Metropolitan Manila, is being offered for sale x x x at an asking price of PhP5,500 per sq. m.

2. Still, a commercial lot having an area of 16,458 sq. m., more or less, located along Dr. A. Santos Avenue (Sucat Road) across

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[35] *National Power Corporation v. Manubay Agro-Industrial Development Corporation,* 480 Phil. 470, 480 (2004).

[36] *Rollo*, pp. 38-39.

SM, Brgy. San Dionisio, Paranaque City, Metropolitan Manila, is being offered for sale x x x at an asking price of PhP18,000 per sq. m.

3. Still, an interior lot having an area of 16,548 sq. m., more or less, located within Sun Victorias Compound, Paranaque City, Metropolitan Manila, is being offered for sale x x x at an asking price of PhP6,500 per sq. m.

4. Still, a commercial lot having an area of 1,828 sq. m., more or less, located about 100 meters away from NAIA Road, Paranaque City, Metropolitan Manila, is being offered for sale x x x at an asking price of PhP20,000.00 per sq. m.

5. Still, a commercial lot having an area of 1,500 sq. m., more or less, located along NAIA Road, Paranaque City, Metropolitan Manila, is being offered for sale x x x at an asking price of PhP20,000.00 per sq. m.[37]

It is evident from the above list that the lowest asking price for the comparable properties was ₱5,500.00 per square meter, which is an interior lot like the subject properties, while the most expensive lot, which is commercial in nature and is along a main road, commands an asking price of PhP20,000.00. However, without presenting any competent proof, RAAC proceeded to contradict its own evidence and alleged that it also "sought the opinion of real estate brokers, bank appraisers and other knowledgeable individuals who, in [its] opinion, may be conversant with land values in the area and gathered that properties with regular cut for commercial development along Dr. A. Santos and Ninoy Aquino Avenues with an average depth of 100 meters can command a price range from PhP20,000 to PhP25,000 per sq. m., while interior properties without access have a going price of PhP2,000 to PhP4,000 per sq. m." RAAC then concludes that the market value of the properties sought to be expropriated should be pegged at ₱2,500.00 per square meter. However, RAAC failed to present satisfactory proof to support its valuation of the subject properties. On the contrary, its own search of comparable properties yielded a different result,

[37] *Id.* at 39-40.

where, as mentioned earlier, the cheapest asking price for an interior lot was ₱5,500.00 per square meter. This is nowhere near RAAC's valuation of ₱2,500.00 per square meter, which as noted by the RTC is even lower than the ₱3,000.00 per-square-meter zonal value of the properties in 1996 which is six (6) years prior to the expropriation.[38] Thus, the RTC did not commit error in refusing to accept RAAC's valuation.

In the same manner, the prices of ₱15,000.00 and ₱12,500.00 per square meter, as suggested by the commissioners of Yao and the heirs of Santiago, respectively, were correctly rejected by the RTC as they did not accurately reflect the fair equivalent of the value of the subject lots because these prices match those of already highly developed residential and commercial properties which are near or along main roads and established thoroughfares.

On the other hand, the Parañaque City Assessor's list of comparable properties located in the same or nearby barangays which were sold for the previous two (2) years shows that these lots fetched selling prices ranging from ₱4,000.00 to ₱6,700.00 per square meter.[39] While these properties are residential lots, the Court, nonetheless, notes that two of the interior lots listed as comparable properties by RAAC were each valued at ₱5,500.00 and ₱6,500.00 per square meter. These valuations fall within the price range of the properties listed by the Parañaque City Assessor.

At this point, it bears to reiterate that just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator.[40] The measure is not the taker's gain, but the owner's loss.[41] The word "just" is used to intensify the meaning of the word "compensation" and to convey, thereby, the idea that the equivalent to be rendered for the property to be taken shall be substantial, full and ample.[42]

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[38] See Parañaque City Ordinance No. 96-16, records, vol. pp. 15-16.

[39] See records, vol. IV, pp. 1-3.

[40] *Republic v. C.C. Unson Company, Inc., supra* note 19.

[41] *Id*.

[42] *Id*.

In this regard, the Court finds it *apropos* to quote pertinent portions of the findings of the RTC which explain the bases for its valuation of the subject lots and the difference in the said valuation, to wit:

> Being an agricultural land, this Court believes that the amount of just compensation or fair value for the expropriated property of the heirs of Eladio Santiago is in the amount of ₱4,500.00 per square meter[,] a little higher than the Zonal Valuation (Ordinance No. 96-16) of ₱3,000.00 per square meter. It is a reasonable amount for its market value assuming that there is an interested buyer. The Court believes that the heirs would not be able to sell it for a higher amount. And assuming [that] there is an interested buyer, the latter would most likely not offer an amount higher than ₱4,500.00 considering its difficult accessibility since it is surrounded by a river.
>
> The property of the heirs of Eladio Santiago is not a residential property with a value of ₱6,000.00 to ₱10,000.00 just like the developed subdivisions such as Moonwalk Subdivision, Bricktown Subdivision and Multinational Village which are located in the neighboring area. Neither could it be considered a commercial land found in the neighboring area which could command a value higher than residential properties. Those properties are not similarly situated since the property of the heirs of Eladio Santiago is surrounded by a river.
>
> The property of Jerry Yao as depicted in the pictures, vicinity maps and Tax Declarations, among others[,] is also an agricultural land. His property was used as a fish pond, understandably because of its proximity to the Don Galo River. As it is now, his property remains an agricultural land although there are residential and commercial properties located not very far away from his property. His property could not be compared to the residential properties nearby since his land is undeveloped. Although there are pictures showing some commercial properties such as the Olivarez Plaza, Airport Citimall, AMVEL Land and the Global Park nearby, those properties are developed commercial properties, Moreover, Olivarez Plaza and Airport Citimall are located alongside Sucat Road and AMVEL Land and Global Park are well-developed commercial properties with very close accessibility to Sucat Road.
>
> Using the same ruling as basis for determining just compensation of the property of Jerry Yao, this Court believes that the amount he would be entitled as a fair value or just compensation for his

expropriated property is ₱5,900 as correctly estimated by the Assessor's Office.

This Court did not arrive on the same valuation for the properties of the heirs of Eladio Santiago and Jerry Yao since both properties are not similarly situated. The property of the heirs of Eladio Santiago is surrounded by the Don Galo River, thus, accessibility is difficult while the property of Jerry Yao is comparatively more accessible since it is not surrounded by a river. In fact, Mr. Yao's property would have commanded a higher value had it been developed. x x x

x x x x x x x x x[43]

Inasmuch as the determination of just compensation in expropriation cases is a judicial function, as earlier discussed, and there being no showing that the RTC did not act capriciously or arbitrarily in its valuation of the subject lots, and that such valuation is affirmed by the CA upon review, the Court sees no reason to disturb the lower courts' factual findings as to such valuation. The findings of the RTC and the CA were based on documentary evidence and the amounts fixed and agreed to by the trial court and respondent appellate court are not grossly exorbitant or otherwise unjustified.

WHEREFORE, the instant petition is **DENIED**. The Decision and Resolution of the Court of Appeals, dated April 27, 2010 and September 15, 2010, respectively, in CA-G.R. CV No. 89842, are **AFFIRMED**.

SO ORDERED.

Carpio (*Chairperson*), *Leonen,* and *Martires, JJ.,* concur.

Mendoza, J., on wellness leave.

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[43] *Rollo*, pp. 225-226.

FIRST DIVISION

[G.R. No. 206590. March 27, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MYRNA GAYOSO *y* ARGUELLES,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; THE DETERMINATION OF THE EXISTENCE THEREOF IS CONCERNED ONLY WITH THE QUESTION OF WHETHER THE AFFIANT HAS REASONABLE GROUNDS TO BELIEVE THAT THE ACCUSED COMMITTED OR IS COMMITTING THE CRIME CHARGED.—** Probable cause for a valid search warrant is defined "as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed, and that objects sought in connection with the offense are in the place sought to be searched." The probable cause must be "determined personally by the judge, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized." Probable cause does not mean actual and positive cause, nor does it import absolute certainty. The determination of the existence of probable cause is concerned only with the question of whether the affiant has reasonable grounds to believe that the accused committed or is committing the crime charged.

2. **CRIMINAL LAW; REPUBLIC ACT NO. 9165; ILLEGAL SALE OF SHABU AND ILLEGAL POSSESSION OF SHABU; ELEMENTS.—** The offense of illegal sale of *shabu* has the following elements: "(1) the identities of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor." On the other hand, the offense of illegal possession of *shabu* has the following elements: "(1) the accused is in possession of an item or an object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused

freely and consciously possessed said drug." In the prosecution for illegal sale and possession of *shabu*, there must be proof that these offenses were actually committed, coupled with the presentation in court of evidence of *corpus delicti*.

3. ID.; ID.; CHAIN OF CUSTODY, DEFINED; LINKS IN THE CHAIN OF CUSTODY; MUST SHOW THAT THE SEIZED ITEM CONFISCATED FROM THE ACCUSED IS THE SAME AS THAT PRESENTED FOR LABORATORY EXAMINATION AND THEN PRESENTED IN COURT.— "The chain of custody requirement x x x ensures that unnecessary doubts concerning the identity of the evidence are removed." Chain of custody is defined as "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 time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction." x x x [A]s a general rule, four links in the chain of custody of the confiscated item must be established x x x. Marking is the placing by the arresting officer or the poseur-buyer of his/her initials and signature on the items after they have been seized. It is the starting point in the custodial link. It is vital that the seized items be marked immediately since the succeeding handlers thereof will use the markings as reference. The chain of custody rule also requires that the marking of the seized contraband be done "(1) in the presence of the apprehended violator, and (2) immediately upon confiscation." In this case, the records do not show that the arresting officers marked the seized items with their initials in the presence of appellant and immediately upon confiscation. x x x The turnover of the seized *shabu* from the arresting officers to the investigating officer in the police station constitutes the second link in the chain of custody. In this regard, the Court takes note that the testimonies of the prosecution witnesses failed to identify the person to whom the seized items were turned over at the police station. x x x The transfer of the seized *shabu* from the investigating officer to the forensic chemist in the crime laboratory is the third link in the chain of custody. While the seized *shabu* was turned over by PI Barber to the PDEA, he no longer had any personal knowledge of the manner it was handled therein. x x x From the foregoing, it appears that no chain of custody was established at all. What we have here are individual

links with breaks in-between which could not be seamlessly woven or tied together. The so-called links in the chain of custody show that the seized *shabu* was not handled properly starting from the actual seizure, to its turnover in the police station and the PDEA, as well as its transfer to the crime laboratory for examination. The Court therefore cannot conclude with moral certainty that the *shabu* confiscated from appellant was the same as that presented for laboratory examination and then presented in court.

4. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; NON-COMPLIANCE WITH THE BASIC PROCEDURAL SAFEGUARDS RELATIVE THERETO MAY BE TREATED WITH LIBERALITY WHEN THE EVIDENTIARY VALUE AND INTEGRITY OF THE ILLEGAL DRUG ARE PROPERLY PRESERVED.— Aside from the failure of the prosecution to establish an unbroken chain of custody, another procedural lapse casts further uncertainty on the identity and integrity of the subject *shabu*. This refers to the non-compliance by the arresting officers with the most basic procedural safeguards relative to the custody and disposition of the seized item under Section 21(1), Article II of RA 9165 x x x. In this case, the apprehending team never conducted a physical inventory of the seized items at the place where the search warrant was served in the presence of a representative of the Department of Justice, nor did it photograph the same in the presence of appellant after their initial custody and control of said drug, and after immediately seizing and confiscating the same. Neither was an explanation offered for such failure. While this directive of rigid compliance has been tempered in certain cases, "such liberality, as stated in the Implementing Rules and Regulations can be applied only when the evidentiary value and integrity of the illegal drug are properly preserved." Such an exception does not obtain in this case. "Serious uncertainty is generated on the identity of the [*shabu*] in view of the broken linkages in the chain of custody. [Thus,] the presumption of regularity in the performance of official duty accorded to the [apprehending officers] by the courts below cannot arise."

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Cenesio C. Gavan for accused-appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

In criminal prosecutions for the illegal sale and possession of *shabu*, primordial importance must be given to "the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused."[1]

This is an appeal from the June 23, 2011 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00744 that affirmed *in toto* the April 12, 2007 Decision[3] of the Regional Trial Court (RTC) of Guiuan, Eastern Samar, Branch 3, in Criminal Case Nos. 2079 and 2078, finding Myrna Gayoso *y* Arguelles (appellant) guilty beyond reasonable doubt of violating Sections 5 (illegal sale of a dangerous drug) and 11 (illegal possession of a dangerous drug), Article II of Republic Act (RA) No. 9165, respectively, and imposing upon her the penalty of life imprisonment and a fine of ₱500,000.00 for selling *shabu,* and the indeterminate prison term of eight (8) years and one (1) day, as minimum, to fourteen (14) years, eight (8) months and one (1) day, as maximum, for possessing 0.53 gram of *shabu*.

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[1] *People v. Mendoza*, 683 Phil. 339, 350 (2012).

[2] CA *rollo*, pp. 100-111; penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Pampio A. Abarintos and Gabriel T. Ingles.

[3] Records (Criminal Case No. 2078), pp. 129-145; penned by Presiding Judge Rolando M. Lacdo-o.

Factual Antecedents

The Information in Criminal Case No. 2078 contained the following accusatory allegations against appellant:

> That on or about the 24th day of March, 2004, at about 5:30 o'clock in the morning at Jetty, Brgy. Hollywood, Guian, Eastern Samar, Philippines, within the jurisdiction of this Honorable Court, the abovementioned accused who acted without the necessary permit from proper authorities whatsoever, did then and there willfully, unlawfully and feloniously have in her possession, control and custody eleven (11) x x x sachets [containing] Methamphetamine Hydrochloride commonly known as "shabu" weighing 0.53 [gram], a dangerous drug.
>
> Contrary to law.[4]

The Information in Criminal Case No. 2079 charged appellant in the following manner:

> That on or about the 24th day of March, 2004, at about 5:00 o'clock in the morning at Jetty, Brgy. Hollywood, Guian, Eastern Samar, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, who acted without the necessary permit or authority whatsoever, did then and there willfully, unlawfully and criminally sell, deliver and dispense one (1) pc. small heat sealed sachet of Methamphetamine Hydrochloride commonly known as "shabu" weighing 0.06 [gram], a dangerous drug.
>
> Contrary to law.[5]

During arraignment, appellant entered a plea of "not guilty" in both cases. Joint trial then ensued.

Version of the Prosecution

Based on the testimonies of SPO3 Victorino de Dios (SPO3 De Dios), SPO3 Rolando G. Salamida (SPO3 Salamida), PO2 Rex Isip (PO2 Isip), SPO4 Josefina Bandoy (SPO4 Bandoy),

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[4] *Id*. at 1.

[5] Records (Criminal Case No. 2079), p. 1.

P/Insp. Eleazar Barber, Jr. (PI Barber), PS/Insp. Benjamin Cruto (PSI Cruto), and the documentary exhibits, the following facts emerged:

PI Barber of the PNP[6] Guiuan Police Station directed SPO3 De Dios to conduct a surveillance on appellant after receiving several reports that she was peddling prohibited drugs. Three weeks later, SPO3 De Dios confirmed that appellant was indeed engaged in illegal drug activities. PI Barber filed for and was issued a search warrant. However, prior to implementing the search warrant, PI Barber decided to conduct a "confirmatory test-buy" designating SPO3 De Dios as poseur-buyer and giving him ₱200.00 marked money for the operation.

On March 24, 2004, SPO3 De Dios and a civilian asset proceeded to the house of appellant and asked her if they could buy *shabu*. The sale was consummated when appellant took the marked money from SPO3 De Dios after giving him a sachet of *shabu*. SPO3 De Dios immediately informed PI Barber by text message about the successful "confirmatory test-buy". PI Barber and his team of police officers who were positioned 100 meters away rushed towards the house of appellant. He also instructed SPO3 De Dios and the civilian asset to summon the *Barangay* Chairman to witness the search of the house. When he arrived together with a *kagawad* and a media representative, SPO3 Salamida read the search warrant to appellant.

During the search of the house, SPO4 Bandoy found a tin foil under the mattress. SPO3 De Dios took it from SPO4 Bandoy and gave it to SPO3 Salamida who found seven sachets of *shabu* inside, in addition to the four sachets of *shabu* found inside the right pocket of the short pants of appellant. The search of the house also revealed several drug paraphernalia. An inventory of seized items was prepared and the same was signed by the *Barangay* Chairman, PO2 Isip, SPO4 Bandoy, and appellant. The sachets of *shabu* were brought to the Philippine Drug Enforcement Agency (PDEA) then to the PNP Crime Laboratory

[6] Philippine National Police.

for qualitative examination. The results of the examination verified that the seized sachets contained *shabu*.

Version of Appellant

Appellant denied the charges against her. She claimed that on March 24, 2004, somebody forcibly kicked the front door of her house and tried to break it open. When she opened the door, PI Barber pushed her aside and told his companions to move quickly. They went directly to her room; when PO2 Isip emerged therefrom seconds later, he was holding a substance that looked like *tawas*. SPO3 De Dios and SPO3 Salamida went in and out of her house. She maintained that the search warrant was shown to her only after an hour and that the sachets of *shabu* were planted. She argued that the police officers fabricated the charges against her since her family had a quarrel with a police officer named Rizalina Cuantero regarding the fence separating their houses.

The Ruling of the Regional Trial Court

The RTC found appellant guilty beyond reasonable doubt of illegal sale and illegal possession of *shabu*. It declared that the prosecution ably established the elements of illegal sale and possession of *shabu* through the testimonies of its witnesses who arrested appellant after selling a sachet of the illegal drug in a "test-buy operation" and for possessing 11 sachets of the same drug in her house after enforcing a search warrant immediately thereafter. Appellant had no evidence that she had license or authority to possess the *shabu*.

The RTC ruled that the evidence sufficiently established the chain of custody of the sachets of *shabu* from the time they were bought from appellant and/or seized from her house, to its turnover to the PDEA and submission to the PNP Crime Laboratory for examination. The RTC rejected appellant's defense of denial and frame-up in view of her positive identification by eyewitnesses as the criminal offender.

The RTC therefore sentenced appellant to life imprisonment and to pay a fine of ₱500,000.00 for the illegal sale of *shabu*. It also sentenced appellant to suffer the indeterminate prison

term of eight (8) years and one (1) day, as minimum to fourteen (14) years, eight (8) months and one (1) day, as maximum and a fine of ₱300,000 for illegal possession of *shabu.*

From this judgment, appellant appealed to the CA. In her Brief,[7] she assailed the validity of the search warrant claiming that it was not issued by the RTC upon determination of probable cause. She argued that the "confirmatory test-buy" conducted by the poseur buyer and the confidential asset was not valid since they forced her to engage in a drug sale. She maintained that the *shabu* presented during trial was inadmissible in evidence due to several gaps in its chain of custody.

The Office of the Solicitor General (OSG) filed its Brief for the Appellee[8] praying for the affirmance of the appealed Decision. It argued that the evidence on which the RTC based its determination of probable cause was sufficient for the issuance of the search warrant. It asserted that the "test-buy operation" was an entrapment and not an inducement. The OSG maintained that the *shabu* confiscated from appellant was admissible in evidence since the prosecution established the proper chain of custody.

The Ruling of the Court of Appeals

The CA affirmed *in toto* the RTC ruling finding appellant guilty of unauthorized sale and possession of *shabu*. The CA ruled that all the elements for the sale of *shabu* were established during the "test-buy operation". It held that the illegal sale of *shabu* was proven by SPO3 De Dios who participated in said operation as the designated poseur buyer. His offer to buy *shabu* with marked money and appellant's acceptance by delivering the illegal drug consummated the offense. The CA likewise declared that the elements for possession of *shabu* were present in the case against appellant. After appellant's arrest for illegal sale of *shabu*, a valid search resulted in the discovery of 11 sachets of *shabu* inside her house, which were under her

[7] CA *rollo*, pp. 53-75.

[8] *Id*. at 37-50.

possession and control. She did not have legal authority to possess the same and failed to overcome the presumption that she consciously knew she was in possession of the illegal drug discovered in her home.

The CA noted that the examination by the trial judge established probable cause in issuing the search warrant. The deposition of PO3 Salamida shows that he had personal knowledge of appellant's drug activities, and the same served as basis for the finding of probable cause for the purpose of issuing a search warrant.

The CA was not swayed by appellant's contention that the "test-buy operation" amounted to instigation since it is settled jurisprudence that a "decoy solicitation" is not tantamount to inducement or instigation. The CA was also unconvinced by appellant's claim that the proof against her was inadmissible since the prosecution failed to show strict compliance with Section 21 of RA 9165 and its implementing rules on the custody and disposition of the evidence.

Appellant filed a Notice of Appeal.[9] On July 15, 2013,[10] the Court notified the parties to file their supplemental briefs. However, appellant opted not to file a supplemental brief since she had extensively argued her cause in her appellants' brief.[11] For its part, the OSG manifested that it would not file a supplemental brief since its appellee's brief filed in the CA had already discussed and refuted the arguments raised by appellant.[12]

Our Ruling

The RTC Issued A Search Warrant After Finding Probable Cause.

Appellant contends that there was no probable cause for the issuance of the search warrant. She claims that PI Barber had no personal knowledge of her alleged drug dealings.

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[9] *Id*. at 129.

[10] *Rollo*, p. 18.

[11] *Id*. at 41-42.

[12] *Id*. at 21-24.

There is no merit in this contention.

Probable cause for a valid search warrant is defined "as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed, and that objects sought in connection with the offense are in the place sought to be searched."[13] The probable cause must be "determined personally by the judge, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized."[14] Probable cause does not mean actual and positive cause, nor does it import absolute certainty. The determination of the existence of probable cause is concerned only with the question of whether the affiant has reasonable grounds to believe that the accused committed or is committing the crime charged.[15]

Here, the records reveal that the trial court issued the search warrant after deposing two witnesses, namely PI Barber and SPO3 Salamida. In particular, the deposition of SPO3 Salamida shows that he had personal knowledge of appellant's drug pushing activities which served as basis for the finding of probable cause for the issuance of the search warrant. Thus, whether or not PI Barber had personal knowledge of the illegal drug activities committed by appellant will not adversely affect the findings of probable cause for the purpose of issuance of search warrant.

Confirmatory test-buy solicitation does not constitute instigation.

Appellant argues that the "confirmatory test-buy" by the police officers was not valid since she was induced by the designated poseur buyer, SPO3 De Dios, and the confidential informant to sell the seized *shabu*.

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[13] *Dr. Prudente v. Executive Judge Dayrit*, 259 Phil. 541, 549 (1989).

[14] *Id.*

[15] *Columbia Pictures Inc. v. Court of Appeals*, 329 Phil. 875, 919 (1996).

There is no merit in this argument.

In inducement or instigation —

> the criminal intent originates in the mind of the instigator and the accused is lured into the commission of the offense charged in order to prosecute him. The instigator practically induces the would-be accused into the commission of the offense and himself becomes a co-principal. [This is distinguished from entrapment wherein] ways and means are resorted to for the purpose of capturing the lawbreaker *in flagrante delicto*.[16]

The "test-buy" operation conducted by the police officers is not prohibited by law. It does not amount to instigation. As in this case, the solicitation of drugs from appellant by the poseur buyer merely furnishes evidence of a course of conduct.[17] The police received an intelligence report that appellant habitually deals with *shabu*. They designated a poseur buyer to confirm the report by engaging in a drug transaction with appellant. There was no proof that the poseur buyer induced appellant to sell illegal drugs to him.

Notwithstanding the foregoing disquisition, appellant still deserves an acquittal as will be discussed below.

The chain of custody of evidence was not established.

Appellant impugns the prosecution's failure to establish the charges of illegal sale and possession of *shabu* against her due to the gaps in the chain of custody and the assailable integrity of the evidence in view of non-compliance with Section 21, Article II of RA 9165.

There is merit in this protestation.

The offense of illegal sale of *shabu* has the following elements: "(1) the identities of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold

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[16] *People v. Gatong-o*, 250 Phil. 710, 711 (1988).

[17] *People v. Sta. Maria*, 545 Phil. 520, 528-529 (2007).

and the payment therefor."[18] On the other hand, the offense of illegal possession of *shabu* has the following elements: "(1) the accused is in possession of an item or an object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed said drug."[19] In the prosecution for illegal sale and possession of *shabu*, there must be proof that these offenses were actually committed, coupled with the presentation in court of evidence of *corpus delicti*.[20]

> In both illegal sale and illegal possession of [*shabu*,] conviction cannot be sustained if there is a persistent doubt on the identity of said drug. The identity of the [*shabu*] must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the [*shabu*] illegally possessed and sold x x x is the same [*shabu*] offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.[21]

"The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed."[22]

Chain of custody is defined as "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 time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction."[23] In *People v. Havana*,[24] the Court expounded on the custodial chain procedure in this wise:

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[18] *People v. Lorenzo*, 633 Phil. 393, 402 (2010).

[19] *Id*. at 403.

[20] *Id.*

[21] *Id.*

[22] *People v. Havana*, G.R. No. 198450, January 11, 2016, 778 SCRA 524, 534.

[23] *Id*.

[24] *Id.* at 534-535.

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 in 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 the 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 obtains in case the evidence is susceptible of 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.

Thus, as a general rule, four links in the chain of custody of the confiscated item must be established:

first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[25]

Marking is the placing by the arresting officer or the poseur-buyer of his/her initials and signature on the items after they have been seized. It is the starting point in the custodial link.

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[25] *People v. Nandi*, 639 Phil. 134, 144-145 (2010).

It is vital that the seized items be marked immediately since the succeeding handlers thereof will use the markings as reference.[26] The chain of custody rule also requires that the marking of the seized contraband be done "(1) in the presence of the apprehended violator, and (2) immediately upon confiscation."[27]

In this case, the records do not show that the arresting officers marked the seized items with their initials in the presence of appellant and immediately upon confiscation. While PO2 Isip testified that the seized sachets of *shabu* were marked in the police station,[28] no evidence was presented to show that the marking was accomplished in the presence of appellant. Moreover, the author of the markings on said items was never identified. None of the police officers admitted placing the markings. There was therefore a complete absence of evidence to prove authorship of the markings.

While marking of the evidence is allowed in the nearest police station, this contemplates a case of warrantless searches and seizures.[29] Here, the police officers secured a search warrant prior to their operation. They therefore had sufficient time and opportunity to prepare for its implementation. However, the police officers failed to mark immediately the plastic sachets of *shabu* seized inside appellant's house in spite of an Inventory of Property Seized that they prepared while still inside the said house. The failure of the arresting officers to comply with the marking of evidence immediately after confiscation constitutes the first gap in the chain of custody.

The turnover of the seized *shabu* from the arresting officers to the investigating officer in the police station constitutes the second link in the chain of custody. In this regard, the Court takes note that the testimonies of the prosecution witnesses

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[26] *People v. Alejandro*, 671 Phil. 33, 46 (2011).

[27] *Id*. at 47.

[28] TSN, July 12, 2005, pp. 107-108.

[29] *People v. Alcuizar*, 662 Phil. 794, 802 (2011).

failed to identify the person to whom the seized items were turned over at the police station. While SPO3 Salamida was identified as the property custodian of the police station, this does not necessarily mean that he is also the investigating officer. There is nothing in the records to substantiate this presumption. This total want of evidence gains importance considering that none of the arresting officers presented as witnesses identified the *shabu* presented during trial as the same *shabu* seized from appellant. Thus, the second link in the chain of custody is missing.

The transfer of the seized *shabu* from the investigating officer to the forensic chemist in the crime laboratory is the third link in the chain of custody. While the seized *shabu* was turned over by PI Barber to the PDEA, he no longer had any personal knowledge of the manner it was handled therein. He also did not identify the police officer in whose custody the seized sachets of *shabu* were placed at the PDEA. He left it to the responsibility of the PDEA to forward the seized *shabu* to the crime laboratory. The request for laboratory examination of the PDEA identifies the police officer who delivered the seized *shabu* as a certain SPO1 Asis, but he was not presented to testify that the *shabu* delivered to the crime laboratory was the same *shabu* confiscated from appellant. There is a third break in the chain of custody.

Nothing also can be gained from the testimony of the forensic chemist PSI Cruto. His testimony is not clear and positive since he failed to assert that the alleged packs of chemical substance presented for laboratory examination and tested positive for *shabu* were the very same substance allegedly recovered from appellant. His testimony was limited to the result of the examination he conducted and not on the source of the substance.

From the foregoing, it appears that no chain of custody was established at all. What we have here are individual links with breaks in-between which could not be seamlessly woven or tied together. The so-called links in the chain of custody show that the seized *shabu* was not handled properly starting from the actual seizure, to its turnover in the police station and the PDEA, as well as its transfer to the crime laboratory for examination. The Court therefore cannot conclude with moral

certainty that the *shabu* confiscated from appellant was the same as that presented for laboratory examination and then presented in court.

It is indeed desirable that the chain of custody should be perfect and unbroken. In reality however, this rarely occurs. The legal standard that must therefore be observed "is the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused."[30] Here, the Court finds that the apprehending officers failed to properly preserve the integrity and evidentiary value of the confiscated *shabu*. There are just too many breaks and gaps to the effect that a chain of custody could not be established at all. Failure of the prosecution to offer testimony to establish a substantially complete chain of custody of the *shabu* and the inappropriate manner of handling the evidence prior to its offer in court diminishes the government's chance of successfully prosecuting a drug case.[31]

Aside from the failure of the prosecution to establish an unbroken chain of custody, another procedural lapse casts further uncertainty on the identity and integrity of the subject *shabu*. This refers to the non-compliance by the arresting officers with the most basic procedural safeguards relative to the custody and disposition of the seized item under Section 21(1), Article II of RA 9165, which reads as follows:

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

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[30] *People v. Mendoza*, *supra* note 1.

[31] *People v. Havana*, *supra* note 22 at 537.

> (1) The apprehending team having initial custody and control of the drug 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.

Corollarily, Section 21(a) of the Implementing Rules and Regulations provides as follows:

> Section 21(a) The apprehending officer/team having initial custody and control of the drug 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, the Department of Justice (DOJ), and a 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 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 seizure of and custody over said items.

In this case, the apprehending team never conducted a physical inventory of the seized items at the place where the search warrant was served in the presence of a representative of the Department of Justice, nor did it photograph the same in the presence of appellant after their initial custody and control of said drug, and after immediately seizing and confiscating the same. Neither was an explanation offered for such failure. While this directive of rigid compliance has been tempered in certain cases, "such liberality, as stated in the Implementing Rules and Regulations

can be applied only when the evidentiary value and integrity of the illegal drug are properly preserved."[32] Such an exception does not obtain in this case. "Serious uncertainty is generated on the identity of the [*shabu*] in view of the broken linkages in the chain of custody. [Thus,] the presumption of regularity in the performance of official duty accorded to the [apprehending officers] by the courts below cannot arise."[33]

WHEREFORE, the appeal is **GRANTED**. The Decision of the Court of Appeals in CA-G.R. CR-HC No. 00744 dated June 23, 2011 is **REVERSED** and **SET ASIDE**. Appellant Myrna Gayoso *y* Arguelles is hereby **ACQUITTED** of the charges, her guilt not having been established beyond reasonable doubt.

The Superintendent for the Correctional Institute for Women is hereby **ORDERED** to immediately **RELEASE** the appellant from custody, unless she is held for another lawful cause.

SO ORDERED.

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

Perlas-Bernabe, J., on official leave.

THIRD DIVISION

[G.R. No. 211335. March 27, 2017]

MST MARINE SERVICES (PHILIPPINES), INC., THOME SHIP MANAGEMENT PTE LTD. AND/OR ALFONSO RANJO DEL CASTILLO, *petitioners, vs.* **TEODY D. ASUNCION,** *respondent.*

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[32] *Id*. at 538-539.

[33] *Id*. at 539.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC); TOTAL AND PERMANENT DISABILITY; MERE LAPSE OF THE 120-DAY PERIOD ITSELF DOES NOT AUTOMATICALLY WARRANT THE PAYMENT OF BENEFITS.— [T]he Court has already held that the mere lapse of the 120-day period itself does not automatically warrant the payment of total and permanent disability benefits. In *Vergara v. Hammonia Maritime Services, Inc., et al*., the Court ruled that a temporary total disability becomes permanent when so declared by the company-designated physician within the period allowed, or upon expiration of the maximum 240-day medical treatment period in case of absence of a declaration of fitness or permanent disability. Besides, permanent disability benefits will be given based on the schedule provided under Section 32 of the POEA-SEC.

2. ID.; ID.; ID.; THIRD PHYSICIAN REQUIRED WHERE CONCLUSION OF SEAFARER'S PHYSICIAN CONTRARY TO COMPANY-DESIGNATED PHYSICIAN; IN ABSENCE THEREOF, FINDINGS OF THE LATTER SHALL PREVAIL.— [W]hile a seafarer is not precluded from seeking a second opinion or consulting his own physician, if his physician's conclusion is contrary to that of the company-designated physician, the rule is clear that a third physician must be jointly appointed by the employer and the seafarer for a final assessment. Without a third-doctor consultation and in the absence of any indication which would cast doubt on the veracity of the company-designated physician's assessment, the company-designated physician's findings shall prevail. The Court has observed in *Philippine Hammonia Ship Agency, Inc., et al. v. Dumadag,* that the third-doctor-referral provision of the POEA-SEC has been honored more in the breach than in the compliance. This is unfortunate considering that the provision is intended to settle disability claims voluntarily at the parties' level where the claims can be resolved more speedily than if they were brought to court. Thus, following *Dumadag*, the Court upheld the findings of the company-designated physician in *Maersk-Filipinas Crewing, Inc. v. Jaleco,* where

the complainant therein also disregarded the procedure for conflict-resolution under the POEA-SEC.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Rolando Go for respondent.

D E C I S I O N

REYES, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, seeking to annul and reverse the Decision[2] dated June 28, 2013 and the Resolution[3] dated February 7, 2014 of the Court of Appeals (CA) in CA-G.R. SP. No. 118686, which affirmed the grant of total and permanent disability benefits to respondent Teody Asuncion (Asuncion).

Facts

In January 2009, MST Marine Services (Philippines), Inc. (MST Marine), on behalf of its foreign principal Thome Ship Management Pte Ltd. (Thome Ship), hired Asuncion as a GP1 Motorman on board the vessel M/V Monte Casino for a period of nine months.[4]

Asuncion left the Philippines on January 22, 2009 to commence his employment.[5] On July 16, 2009, while he was on his way to the Poop Deck of the vessel, he lost his balance and fell down on the floor. He felt pain on his back which

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[1] *Rollo*, pp. 3-40.

[2] Penned by Associate Justice Michael P. Elbinias, with Associate Justices Isaias P. Dicdican and Nina G. Antonio-Valenzuela concurring; *id.* at 43-55.

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

[4] *Id.* at 6.

[5] *Id.*

persisted despite intake of pain relievers. Thus, he was brought to a doctor in Kakinada, India, who recommended his repatriation for further medical evaluation and treatment.[6]

Upon Asuncion's arrival in Manila on August 22, 2009, he was referred to Dr. Nichomedes Cruz (Dr. Cruz), a company-designated physician at the Manila Doctors Hospital.[7] He was given the initial diagnosis of "Lumbosacral Strain,"[8] but to rule out other possibilities, Asuncion was subjected to a magnetic resonance imaging (MRI) which showed normal results. Still, Asuncion complained of low back pains.[9] He was advised to undergo electromyography-nerve conduction velocity (EMG-NCV) and to continue with his medications.[10] Results of his EMG-NCV turned out normal.[11] Upon Asuncion's request, his therapy sessions were done at St. Paul's Hospital in Iloilo City.[12]

On January 6, 2010, during the period he was still undergoing therapy, Asuncion filed a complaint for total and permanent disability benefits with the Labor Arbiter (LA).[13]

Two months later, on March 10, 2010, Asuncion consulted Dr. Nicanor F. Escutin (Dr. Escutin), a private physician, who, after a physical examination, diagnosed him with "Chronic Low Back Pain Syndrome, Lumbar Spondylolisthesis L4/L5 and Degenerative Joint Disease." According to Dr. Escutin, Asuncion has a permanent disability and is unfit for sea duty in whatever capacity as a seaman.[14]

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[6] *Id*. at 112.

[7] *Id*. at 6.

[8] CA *rollo*, p. 245.

[9] *Id*. at 244.

[10] *Id*. at 243.

[11] *Id*. at 242.

[12] *Id*. at 113.

[13] *Rollo*, p. 6.

[14] CA *rollo*, pp. 238-239.

On March 16, 2010, Dr. Cruz assessed Asuncion with Disability Grade 8 - moderate rigidity of two-thirds loss of motion or lifting power of the trunk.[15]

Ruling of the LA

On July 30, 2010, the LA rendered a Decision,[16] disposing of the case in this wise:

> **WHEREFORE**, premises considered, judgment is hereby rendered declaring [MST Marine, Thome Ship and/or Alfonso Ranjo del Castillo] liable to pay, jointly and severally, [Asuncion's] permanent total disability benefits of **US$60,000.00** plus **US$6,000.00** as 10% attorney's fees, in Philippine currency at the prevailing rate of exchange at the time of payment.
>
> All other claims are dismissed for lack of merit.
>
> **SO ORDERED**.[17]

The LA considered Asuncion to have suffered from a total and permanent disability since he was not declared fit to work despite more than six months of treatment.[18]

MST Marine, Thome Ship and/or Alfonso Ranjo del Castillo (collectively, the petitioners) appealed the decision of the LA with the National Labor Relations Commission (NLRC).[19]

Ruling of the NLRC

In a Decision[20] dated December 14, 2010, the NLRC affirmed the LA's ruling *in toto*. The NLRC opined that the injury sustained by Asuncion prevented him from performing his usual

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[15] *Id*. at 355.

[16] Rendered by LA Eduardo G. Magno; *id*. at 110-122.

[17] *Id*. at 122.

[18] *Id*. at 118.

[19] *Id*. at 123-160.

[20] Penned by Commissioner Pablo C. Espiritu, Jr., with Presiding Commissioner Alex A. Lopez and Commissioner Gregorio O. Bilog, III concurring; *id*. at 51-56.

duties as a seaman; no manning agency or shipping company will dare employ him because of his condition.[21] The petitioners' Motion for Reconsideration[22] was denied by the NLRC through a Resolution[23] dated January 31, 2011.

The petitioners sought recourse with the CA by way of a petition for *certiorari*.[24]

In the meantime, Asuncion received the amount of ₱2,797,080.00 from the petitioners as conditional payment of the judgment award granted by the NLRC. The payment was made to prevent the actual execution of the judgment, without prejudice to the petition for *certiorari* then pending with the CA.[25]

Ruling of the CA

On June 28, 2013, the CA promulgated the assailed Decision,[26] holding the petitioners liable for total and permanent disability benefits. The CA ratiocinated that the disability grading given by Dr. Cruz cannot be relied upon since he merely referred Asuncion to Dr. Minda Marie S. Cabrera, a physiatrist who actually administered Asuncion's therapy sessions.[27]

According to the CA, the disability grading made by the company-designated physician is "not final, binding, or conclusive on the seafarer, the labor tribunals, or the courts."[28] Citing jurisprudence, the CA held that the true test of whether Asuncion suffered from total and permanent disability is his inability to perform his job for more than 120 days, regardless of whether or not he loses the use of any part

[21] *Id*. at 55.

[22] *Id*. at 60-94.

[23] *Id*. at 58-59.

[24] *Id*. at 3-48.

[25] *Rollo*, p. 213.

[26] *Id*. at 43-55.

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

[28] *Id*. at 50.

of his body.[29] As Asuncion was rendered unfit to discharge his duties as a seaman for more than 120 days from the time he was repatriated to the Philippines on August 22, 2009, his disability is permanent and total.[30]

Lastly, the CA gave credence to the disability report issued by Asuncion's private physician, Dr. Escutin, which showed that Asuncion was unfit for sea duty in whatever capacity as a seaman.[31]

The CA also affirmed the award of attorney's fees in the amount of US$6,000.00.[32]

The petitioners filed a Motion for Reconsideration,[33] but the CA denied the same in its Resolution[34] dated February 7, 2014.

Hence, the present petition for review.

Issues

The petitioners present the following issues for resolution:

WHETHER THE CA COMMITTED SERIOUS AND REVERSIBLE ERROR OF LAW IN AWARDING:

A. Full and permanent disability benefits to Asuncion notwithstanding the Partial Disability Grade 8 assessed by the company-designated physician;

B. Full and permanent disability benefits to Asuncion for his inability to work for more than 120 days; and

C. Attorney's fees.[35]

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[29] *Id*.

[30] *Id*. at 52.

[31] *Id*.

[32] *Id*. at 53.

[33] *Id*. at 56-78.

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

[35] *Id*. at 8.

Praying for the reversal of the CA rulings and, corollary, the dismissal of Asuncion's complaint, the petitioners aver that under the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC),[36] in case of permanent total or partial disability of the seafarer due to injury or illness, he shall be compensated in accordance with the schedule of benefits enumerated under Section 32 thereof. Besides, the POEA-SEC provides that the fitness to work or degree of disability, as the case may be, has to be established by the company-designated physician.[37]

The petitioners posit that the CA erred in upholding the findings of Asuncion's physician[38] and in granting his claim based merely on his inability to work for more than 120 days.[39] They claim that Asuncion has no cause of action against them since he consulted his private physician only after the filing of his complaint.[40]

In his Comment,[41] Asuncion argues that the petitioners raise questions of fact in violation of Rule 45 of the Rules of Court. He stresses that only questions of law may be raised in a petition for review on *certiorari* because the Court is not a trier of facts.[42]

Asuncion also submits that, in any event, the Labor Code's concept of total and permanent disability has been applied to seafarers such that the POEA-SEC is not the sole issuance which governs their rights in the event of work-related death, injury or illness. Under Article 192(c)(1) of the Labor Code, a disability is deemed permanent total if it lasts

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[36] Memorandum Circular No. 10, series of 2010, entitled Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-going Ships. Issued on October 26, 2010.

[37] *Rollo*, p. 10.

[38] *Id*.

[39] *Id*. at 20.

[40] *Id*. at 26.

[41] *Id*. at 106-157.

[42] *Id*. at 107.

continuously for more than 120 days.[43] Even if the period for treatment was extended to 240 days based on prevailing jurisprudence, Asuncion was never declared fit to work by Dr. Cruz. Asuncion insists that he can no longer perform the tasks of a seafarer, as confirmed by his physician, Dr. Escutin.[44] Finally, Asuncion maintains that the petitioners had already paid the judgment award to him voluntarily, rendering this petition moot and academic.[45]

In their Reply,[46] the petitioners aver that the decision of the NLRC is subject to judicial review of the CA by the filing of a petition for *certiorari* within 60 days from notice of the assailed decision or resolution.[47] As such, the CA can still grant the petition, reverse, or modify the NLRC decision. Additionally, the payment to Asuncion was made with the agreement that he should return whatever is due to the petitioners should there be a modification or reversal of the NLRC decision.[48]

Ruling of the Court

The petition is denied, but not for the reasons provided in the assailed decision.

To start off, the Court has already held that the mere lapse of the 120-day period itself does not automatically warrant the payment of total and permanent disability benefits.[49] In *Vergara v. Hammonia Maritime Services, Inc., et al.*,[50] the

[43] *Id*. at 128.

[44] *Id*. at 130-132.

[45] *Id*. at 150.

[46] *Id*. at 198-210.

[47] *Id*. at 204.

[48] *Id*. at 203.

[49] *Tagalog v. Crossworld Marine Services, Inc.,* G.R. No. 191899, June 22, 2015, 759 SCRA 632, 642.

[50] 588 Phil. 895 (2008).

Court ruled that a temporary total disability becomes permanent when so declared by the company-designated physician within the period allowed, or upon expiration of the maximum 240-day medical treatment period in case of absence of a declaration of fitness or permanent disability.[51]

Besides, permanent disability benefits will be given based on the schedule provided under Section 32 of the POEA-SEC. In *Scanmar Maritime Services, Inc., et al. v. Emilio Conag*,[52] the Court reiterated that:

> [F]or work-related illnesses acquired by seafarers from the time the 2010 amendment to the POEA-SEC took effect, the declaration of disability should no longer be based on the number of days the seafarer was treated or paid his sickness allowance, but rather on the disability grading he received, whether from the company-designated physician or from the third independent physician, if the medical findings of the physician chosen by the seafarer conflicts with that of the company-designated doctor.[53] (Citation omitted)

Moreover, while a seafarer is not precluded from seeking a second opinion or consulting his own physician, if his physician's conclusion is contrary to that of the company-designated physician, the rule is clear that a third physician must be jointly appointed by the employer and the seafarer for a final assessment.[54] Without a third-doctor consultation and in the absence of any indication which would cast doubt on the veracity of the company-designated physician's assessment, the company-designated physician's findings shall prevail.

The Court has observed in *Philippine Hammonia Ship Agency, Inc., et al. v. Dumadag,*[55] that the third-doctor-referral provision of the POEA-SEC has been honored more in the breach than in the compliance. This is unfortunate considering that

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[51] *Id*. at 913.

[52] G.R. No. 212382, April 6, 2016.

[53] *Id*.

[54] POEA-SEC, Section 20(A)(3), paragraph (4).

[55] 712 Phil. 507 (2013).

the provision is intended to settle disability claims voluntarily at the parties' level where the claims can be resolved more speedily than if they were brought to court.[56] Thus, following *Dumadag*, the Court upheld the findings of the company-designated physician in *Maersk-Filipinas Crewing, Inc. v. Jaleco,*[57] where the complainant therein also disregarded the procedure for conflict-resolution under the POEA-SEC.

The same circumstance exists in Asuncion's case - he neither sought to be referred to a third doctor nor did he offer any explanation for his non-observance of this procedure. As a matter of fact, when he filed the complaint for payment of disability benefits on January 6, 2010, he did so without any factual medical basis. To recall, it was only on March 10, 2010 when Asuncion consulted his own physician, whereas, the company-designated physician assessed Asuncion with Disability Grade 8 on March 16, 2010. Thus, at the time he filed his complaint, there was no medical basis supporting his claim at all. Asuncion's complaint was clearly premature.[58]

Also, the Court does not agree with the discourse on rejecting the company-designated physician's assessment simply because another specialist administered Asuncion's physical therapy sessions. Based on the records, Dr. Cruz monitored Asuncion's condition as he regularly checked him in his clinic despite the fact that the therapy sessions were held in Iloilo City. Asuncion's diagnostic tests such as MRI and EMG-NCV were conducted in Dr. Cruz's clinic; an orthopedic surgeon working with Dr. Cruz even reviewed Asuncion's MRI results since the latter's alleged symptoms were incompatible with the results of his medical tests.[59] These are badges that Dr. Cruz arrived at his assessment based on objective scientific procedures, which Asuncion was not able to successfully controvert.

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[56] *Id*. at 522-523.

[57] G.R. No. 201945, September 21, 2015, 771 SCRA 163.

[58] See *Wallem Maritime Services, Inc., Reginaldo A. Oben and Wallem Shipmanagement, Ltd. v. Edwinito V. Quillao,* G.R. No. 202885, January 20, 2016.

[59] CA *rollo*, p. 242.

Finally, Asuncion's own physician, Dr. Escutin, aside from his general and sweeping statement that Asuncion is suffering from a permanent disability, did *not* make any declaration as regards Asuncion's disability grading. As indicated in the medical certificate Dr. Escutin himself had issued, he only conducted a *physical* examination on Asuncion.[60] Ironically, in the same certificate where he pronounced Asuncion's disability as total and permanent, he recommended Asuncion to undergo MRI, Computerized Tomography scan of ulnar bone and EMG-NCV to determine the level of injury.[61] This is telling, as it reveals that Dr. Escutin made a "final" diagnosis while admitting that further diagnostic tests should still be administered. Under these circumstances, the Court does not find his conclusion to be more reliable than the assessment of the company-designated physician. Besides, there is no evidence that Asuncion undertook any of these procedures with Dr. Escutin despite the latter's recommendation.

The foregoing disquisition notwithstanding, the Court is constrained to rule against the restitution of the award in the amount of ₱2,797,080.00, which Asuncion received as conditional satisfaction of the judgment of the NLRC.

In *Career Philippines Ship Management, Inc. v. Madjus*,[62] it was enunciated that the conditional settlement of the judgment award operates as a final satisfaction thereof which renders the case moot and academic.[63] This pronouncement was later clarified in *Philippine Transmarine Carriers, Inc. v. Legaspi*,[64] where the Court explained that it ruled against the employer in *Madjus* because of the prejudice that the

[60] *Id*. at 238.

[61] *Id*. at 239.

[62] 650 Phil. 157 (2010).

[63] *Id*. at 163.

[64] 710 Phil. 838 (2013).

terms accompanying the conditional settlement of judgment would cause the employee, *viz.*:

> [T]he Court ruled against the employer because the conditional satisfaction of judgment signed by the parties was highly prejudicial to the employee. The agreement stated that the payment of the monetary award was without prejudice to the right of the employer to file a petition for *certiorari* and appeal, while the employee agreed that she would no longer file any complaint or prosecute any suit of action against the employer after receiving the payment.[65]

In *Legaspi*, the Court allowed the return of the excess payment of the award to the employer, because the Receipt of the Judgment Award with Undertaking was fair to both the employer and the employee. The said agreement stipulated that the employee should return the amount to the employer if the petition for *certiorari* (filed by the employer) would be granted but *without prejudice to the employee's right to appeal*. The agreement, thus, provided available remedies to both parties. These principles were echoed in *Seacrest Maritime Management, Inc. v. Picar, Jr.*;[66] *Philippine Transmarine Carriers, Inc. v. Pelagio*;[67] and *Juan B. Hernandez v. Crossworld Marine Services, Inc., Mykonos Shipping Co., Ltd., and Eleazar Diaz*.[68]

In the instant case, the following documents were executed in view of Asuncion's receipt of the judgment award:

1. Conditional Satisfaction of Judgment All Without Prejudice to the Pending Petition for *Certiorari* in the CA (Conditional Satisfaction of Judgment);[69] and
2. Affidavit[70] by Asuncion.

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[65] *Id*. at 847-848.

[66] G.R. No. 209383, March 11, 2015, 753 SCRA 207.

[67] G.R. No. 211302, August 12, 2015, 766 SCRA 447.

[68] G.R. No. 209098, November 14, 2016.

[69] *Rollo*, pp. 212-215.

[70] *Id*. at 216-217.

While the Conditional Satisfaction of Judgment is clear that the payment was being made without prejudice to the petitioners' special civil action for *certiorari* then pending with the CA,[71] Asuncion's Affidavit reads:

> 7. That I have no further claims whatsoever in any theory of law against the Owners of "**MONTE CASINO**" because of the payment made to me. That I certify and warrant that I will not file any complaint or prosecute any suit or action in the Philippines, Panama, Japan or any other country against the shipowners and/or released parties herein after receiving the payment of US$66,000.00 or its peso equivalent of Php2,797,080.00[.][72]
> (Emphasis in the original and underlining ours)

Inasmuch as the foregoing statements were the same as those which were viewed negatively by the Court in its previous dispositions for being disadvantageous and inequitable to the employee, the Court holds that the payment of Asuncion's claim should be treated as voluntary settlement of his claim in full satisfaction of the NLRC decision, rendering the petition in CA-G.R. SP No. 118686 moot and academic.

WHEREFORE, the petition is **DENIED**. The Decision dated June 28, 2013 and Resolution dated February 7, 2014 of the Court of Appeals in CA-G.R. SP. No. 118686 are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Jardeleza,* and *Tijam, JJ.,* concur.

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[71] *Id*. at 213-214.

[72] *Id*. at 216-217.

SECOND DIVISION

[G.R. No. 216015. March 27, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JESUSANO ARCENAL *y* AGUILAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; CARNAPPING; ELEMENTS.— In every criminal conviction, the prosecution is required to prove two things beyond reasonable doubt: *first*, the fact of the commission of the crime charged, or the presence of all the elements of the offense; and *second*, the fact that the accused was the perpetrator of the crime. The elements of carnapping as defined and penalized under Republic Act (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.

2. ID.; ID.; 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.— 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. In this case, there was no eyewitness to the act of killing. However, this Court finds that the pieces of circumstantial evidence presented before the trial court, which are consistent with one another, establishes Arcenal's guilt beyond reasonable doubt.

3. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; CIRCUMSTANTIAL EVIDENCE; IF SUFFICIENT, CAN REPLACE DIRECT EVIDENCE TO WARRANT THE CONVICTION OF AN ACCUSED; REQUISITES.— Circumstantial, indirect or presumptive evidence, if sufficient, can replace direct evidence to warrant the conviction of an accused, provided 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. Thus, 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.

4. CRIMINAL LAW; REVISED PENAL CODE; CARNAPPING; UNLAWFUL TAKING; 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. The prosecution was able to prove that there was unlawful taking of the vehicle. The fingerprints, which was confirmed as identical with Arcenal's, found on the vehicle not only substantiated the testimonies of Flores and Meras that he was indeed Alvin's passenger but also established that he had possession of the said vehicle.

5. ID.; ID.; ID.; INTENT TO GAIN; AN INTERNAL ACT, WHICH 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. Arcenal's fleeing with Alvin's tricycle showed his intent to gain. That it was later abandoned does not negate his intent.

6. REMEDIAL LAW; EVIDENCE; FLIGHT IS AN INDICATION OF GUILT OR OF A GUILTY MIND.— [T]he police failed to locate Arcenal after learning from witnesses that the latter was last seen with Alvin and was driving the vehicle alone thereafter. The police even received information that Arcenal was hiding in Mindoro. The Pila, Laguna PNP indorsed on January 15, 2001 the conduct of a manhunt. However, it was a year later, or in 2002 that they were able to arrest Arcenal following a tip that he was in Pakil, Laguna. 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.

7. ID.; ID.; DEFENSE OF ALIBI; TO PROSPER, THE ACCUSED MUST ESTABLISH THAT HE WAS NOT AT THE *LOCUS DELICT* 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. In this case, Arcenal vehemently denied the accusations. However, 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 the crime. He did not present any evidence or testimony to corroborate the same.

8. ID.; ID.; CREDIBILITY OF WITNESSES; POSITIVE IDENTIFICATION PERTAINS ESSENTIALLY TO PROOF OF IDENTITY AND NOT *PER SE* TO THAT OF BEING AN EYEWITNESS TO THE VERY ACT OF

COMMISSION OF THE CRIME.— The prosecution, on the other hand, ascertained Arcenal's identity as the perpetrator. Jurisprudence teaches that positive identification pertains essentially to proof of identity and not *per se* to that of being an eyewitness to the very act of commission of the crime. There may be instances where, although a witness may not have actually seen the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as for instance *when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime*. This type of positive identification forms part of circumstantial evidence, which, when taken together with other pieces of evidence constituting an unbroken chain, leads to only one fair and reasonable conclusion, which is that the accused is the author of the crime to the exclusion of all others.

9. ID.; ID.; ID.; WITNESSES ARE NOT EXPECTED TO REMEMBER EVERY SINGLE DETAIL OF AN INCIDENT WITH PERFECT OR TOTAL RECALL.— [T]he testimonies of Flores and Meras pointing to Arcenal as Alvin's back rider that night, coupled with the other circumstances, sufficiently establish the identity of the accused as the author of the crime to the exclusion of all others. Arcenal harps on the supposed inconsistencies on Flores's testimonies. Flores claimed that he saw Arcenal at Barangay Linga, however, Forest Park is in fact situated in Barangay Pinagbayanan. We find that such inconsistencies involve trivial matters that do not involve the essential elements of the crime. "Inaccuracies may in fact suggest that the witnesses are telling the truth and have not been rehearsed. Witnesses are not expected to remember every single detail of an incident with perfect or total recall."

10. ID.; ID.; ID.; ABSENT ANY SHOWING THAT THE TRIAL JUDGE ACTED ARBITRARILY, OR OVERLOOKED, MISUNDERSTOOD, OR MISAPPLIED SOME FACTS OR CIRCUMSTANCES OF WEIGHT WHICH WOULD AFFECT THE RESULT OF THE CASE, HIS ASSESSMENT OF THE CREDIBILITY OF WITNESSES DESERVES HIGH RESPECT BY THE APPELLATE

COURT.— 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. Absent any showing that the trial judge acted arbitrarily, or overlooked, misunderstood, or misapplied some facts or circumstances of weight which would affect the result of the case, his assessment of the credibility of witnesses deserves high respect by the appellate court. After a judicious examination of the records of this case, this Court finds no cogent reason to doubt the veracity of the findings and conclusions made by the trial court on the credibility of the prosecution witnesses' testimonies.

11. MINAL LAW; REVISED PENAL CODE; CARNAPPING WITH HOMICIDE; PROPER IMPOSABLE PENALTY.— The RTC is correct in imposing the penalty of *reclusion perpetua*, considering that there is no proven aggravating circumstance that would warrant the imposition of the penalty of Death. 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. Thus, Arcenal is ordered to pay the heirs of Alvin civil indemnity, moral damages, and exemplary damages in the amount of ₱75,000.00 each. Additionally, Arcenal is ordered to pay ₱50,000.00 as temperate damages, and pay interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this 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.*:

Before Us for review is the May 12, 2014 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 05000, which affirmed the Decision[2] dated November 30, 2010 of the Regional Trial Court (*RTC*), Branch 27, Santa Cruz, Laguna in Criminal Case No. SC-8602.

The antecedent facts are as follows:

Accused-appellant Jesusano Arcenal y Aguilan (*Arcenal*) 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. The accusatory portion of the Information reads:

> That on or about April 11, 2000, in the Municipality of Pila, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain, by means of force and violence and in the night time, which circumstances facilitated the commission of the offense, did then and there willfully, unlawfully and feloniously take, steal and drive away a motorized Yamaha tricycle with Plate No. DT-6680 valued at [₱]22,000.00 owned and belonging to one RENATO DE RAMA, and which at the time was driven by one ALVIN DE RAMA, against their will and consent and to the damage and prejudice of the afore-named owner thereof in the said amount of TWENTY-TWO THOUSAND ([₱]22,000.00) PESOS, Philippine currency; that in the course of the commission of the aforesaid offense or on the occasion thereof, the same [above-named] accused, while conveniently armed with an unestablished (sic) deadly weapon/instrument, with intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault, hit and strike with the said weapon/instrument the driver of the same motorized tricycle, ALVIN DE RAMA, thereby inflicting upon the latter gaping wounds

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[1] Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Rosmari D. Carandang and Marlene Gonzales-Sison, concurring, *rollo*, pp. 2-15.

[2] Penned by (Former) Acting Presiding Judge Jaime C. Blancaflor; CA *rollo*, pp. 11-23.

with irregular edges on the right and occipital area of his head aside from the abrasions and hematomas on the different parts of his body which directly caused his instantaneous death, to the damage and prejudice of his surviving heirs.

Contrary to law.[3]

Arcenal pleaded not guilty at his arraignment on May 17, 2000 wherein the Information was read and translated in Tagalog, a language he knew and understood. Thereafter, the trial on the merits ensued.

The prosecution established that: around 11:00 p.m. on April 11, 2000, the victim Alvin de Rama (*Alvin*) was waiting behind Jay Flores (*Flores*) and the other drivers at the tricycle terminal at the corner of the road going to Barangay Linga and the highway at Barangay Labuin.[4] Mario Meras (*Meras*) was inside the sidecar of his tricycle which was about three vehicles behind Alvin in the tricycle line. Although there were other drivers waiting in line before him, Alvin left ahead with his lone passenger and backrider, Arcenal. Fifteen minutes later, Flores was *en route* to the terminal after dropping his passenger when he saw Arcenal driving Alvin's tricycle alone coming from the direction of Forest Park Subdivision (*Forest Park*), Barangay Linga. Flores had to apply brakes as Arcenal was speeding towards the direction of Barangay Labuin.

At 6:05 a.m. on April 12, 2000, Alvin was found dead at the Forest Park.[5] Flores heard from the other drivers about Alvin's death. Meras also heard the news and went to Forest Park where he saw Alvin's body at the side of the road.[6]

On April 13, 2000, the Pila, Laguna Philippine National Police (*PNP*) received a radio call from San Pedro, Laguna PNP that the barangay captain of San Antonio reported about an abandoned

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[3] *Id.* at 11.

[4] *Id.* at 12.

[5] Records p. 20.

[6] CA *rollo* p. 13.

tricycle with plate number DT 6680 found in Woodville Subdivision.[7]

With assistance from the elements of San Pedro PNP, Alvin's father Renato de Rama (*Renato*) and SPO3 Rufino Anterola (*SPO3 Anterola*) went to the San Antonio barangay hall to identify the recovered vehicle. Renato confirmed that it was indeed his tricycle driven by his son.[8] SPO3 Anterola noted the bloodstains on the motorcycle and the sidecar. The police officers were not able to locate Arcenal, who, according to witnesses, was the last person seen with the victim.

Dr. Daissan M. Alagon (*Dr. Alagon*), Municipal Health Officer of Pila, Laguna, performed the autopsy on the cadaver of Alvin at 9:00 a.m. on April 12, 2000. A portion of the medico-legal necropsy report reads:

PERTINENT FINDINGS:
- Pallor
- Rigor Mortis
- 4 cm x 1.5 cm x 3mm gaping wound with irregular edges on the right occipital area, head
- 5 cm x 1.5 cm x 3 mm gaping wound with irregular edges on the right occipital area, head about 1.5 cm above the first wound mentioned above.
- 4 cm x 2.0 cm x 3 mm gaping wound with irregular edges on the left occipital area, head
- confluent abrasions, left forehead
- contusion hematoma, periorbital area, left
- contusion hematoma, entire posterior neck area.
- 1 cm in diameter abrasion, right lower quadrant of abdomen
- 3 cm x 2 cm confluent abrasion on both knees
- 1 cm in diameter multiple abrasions on the right popliteal area.
- Multiple 0.5 cm abrasions on the level of third lumbar vertebra.
- 1 cm in diameter abrasion on the level of first lumbar vertebra

[7] *Id.* at 14.

[8] *Id.*

On opening up:

- Contusion hematoma of anterior SCALP, frontal area, with laceration of aponeurosis.
- Contusion hematoma of posterior SCALP, entire occipital area, with lacerations of aponeurosis.
- Intra-cranial hemorrhage with clotted blood noted on the intra-cranial cavity
- Contusion hematoma, cerebral hemispheres, bilateral

CAUSE OF DEATH:

Shock secondary to Intra-cranial Hemorrhage, secondary to Trauma.
x x x.[9]

On the other hand, the defense chronicled a different set of events. On April 11, 2000, Arcenal was in Barangay Aplaya, Pila, Laguna to give money to his parents for the medicine of the newly-born piglets.[10] He and his family were at the house of one Nanay Alice Tope who was then sick. His siblings fed him and told him to sleep at the house. He left for work at 3:00 a.m. the next day, and arrived at San Juan, Batangas about two hours later. He left Pila, Laguna with his wife and children and resided in Batangas City on April 11, 2000. He returned to Laguna for the first time since leaving in 2000 three days prior to his arrest on April 12, 2002. He was staying at his sister Mildred Arcenal's house in Pakil for a vacation as her child was sick.[11]

The RTC convicted accused-appellant Arcenal of the crime of carnapping with homicide. The dispositive portion of the decision reads:

WHEREFORE, herein accused JESUSANO ARCENAL y AGUILAN is hereby sentenced to a penalty of *reclusion perpetua* to pay the heirs of Alvin de Rama the following:

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[9] Records. pp. 20-21.

[10] CA *rollo,* p. 17.

[11] *Id.* at 18.

1. [₱]50,000.00 as civil indemnity for the death of Alvin de Rama;

2. [₱]50,000.00 as exemplary damages.

Herein accused JESUSANO ARCENAL y AGUILAN is hereby ordered to pay to Renato de Rama, tricycle owner, the following:

1. [₱]50,000.00 as exemplary damages.

SO ORDERED.[12]

The RTC found that the uncontroverted presence of his fingerprint on the tricycle established that he took possession of the same. It rejected his defense of denial and alibi for being uncorroborated and riddled with inconsistencies. Arcenal did not bother to visit his parents and siblings at Pila, about an hour away from Pakil since 2000. The trial court opined that this deviation from the norm manifested a feeling of fear greater than said filial obligation — the fear of being arrested and to be held criminally liable.[13] That he came from Taguig, Rizal before he went to his sister's house in Pakil supported the trial court's conclusion that he was not always in Batangas as he claimed and was moving around obviously to elude arrest.[14]

On appeal, the CA affirmed the decision of the RTC *in toto*. In affirming Arcenal's conviction, the CA ruled that while no one saw Arcenal in the act of killing Alvin, the pieces of circumstantial evidence result in an unbroken chain of events leading to the inevitable and reasonable conclusion that Arcenal indeed committed the crime. Arcenal was the last person seen with Alvin, and was driving the latter's tricycle alone thereafter. When a person is in possession of a thing unlawfully taken, the taker is presumed to have unlawfully taken the same. The *fallo* of the decision states:

WHEREFORE, the assailed Decision is **AFFIRMED IN TOTO**.

SO ORDERED.[15]

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[12] *Id.* at 23.

[13] *Id.* at 20-21.

[14] *Id.* at 21.

[15] *Rollo*, p. 15. (Emphasis in the original)

Hence, the instant appeal was instituted.

The Office of the Solicitor General, in its Manifestation in Lieu of Supplemental Brief,[16] informed this Court that it opted not to file a supplemental brief since its Brief[17] dated February 28, 2012 has already exhaustively discussed the issues in the case, and the same would result in a repetition of the same arguments. For his part, Arcenal, through the Public Attorney's Office, manifested his intention to adopt his Appellant's Brief as his supplemental brief.[18]

Basically, the issue to be resolved by this Court in this appeal is whether the prosecution has successfully proven beyond reasonable doubt that Arcenal is guilty of the crime of carnapping with homicide.

In every criminal conviction, the prosecution is required to prove two things beyond reasonable doubt: *first*, the fact of the commission of the crime charged, or the presence of all the elements of the offense; and *second*, the fact that the accused was the perpetrator of the crime.[19]

The elements of carnapping as defined and penalized under Republic Act (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.[20]

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[16] *Id.* at 24-25.

[17] CA *rollo*, pp. 69-81.

[18] *Rollo*, pp. 33-34.

[19] *People v. Santos*, 388 Phil. 993, 1004 (2000).

[20] *People v. Bernabe and Garcia*, 448 Phil. 269, 280 (2003).

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.[21]

In this case, there was no eyewitness to the act of killing. However, this Court finds that the pieces of circumstantial evidence presented before the trial court, which are consistent with one another, establishes Arcenal's guilt beyond reasonable doubt. Circumstantial, indirect or presumptive evidence, if sufficient, can replace direct evidence to warrant the conviction of an accused, provided 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.[22] Thus, 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.[23]

First. The tricycle was definitely ascertained to belong to Renato, as evidenced by a Deed of Absolute Sale[24] in his favor.

Second. Alvin was last seen alive at the tricycle terminal at 11:00 p.m. on April 11, 2000, as stated in the direct testimonies of Flores and Meras:

PROS. RODRIGO:

Q: Now, in the evening of April 11, 2000, Mr. Witness, did you see Alvin de Rama driving his tricycle?
A: Yes, sir.

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[21] *People v. Aquino*, 724 Phil. 739, 757 (2014).

[22] Section 4, Rule 133 of the Rules of Court; *People v. Randy Bañez y Baylon, et al.*, G.R. No. 198057, September 21, 2015.

[23] *People v. Lagat*, 673 Phil. 351, 368 (2011).

[24] Records, p. 22.

Q: Where did you specifically see this Alvin de Rama, Mr. Witness?
A: At the corner, sir.

Q: The place [where] you were parked at that time?
A: Yes, sir.

Q: And who arrived ahead, Mr. Witness, you or Alvin de Rama?
A: I, sir.

x x x x x x x x x[25]

PROS. RODRIGO:

Q: Now Mr. Witness, on April 11, 2000, at about 11:00 o'clock in the evening, do you still recall where you were?
A: During that time, I was then at the tricycle terminal at Brgy. Labuin, Pila, Laguna, sir.

Q: Are you referring to the tricycle terminal located at Brgy. Labuin at the corner of the national highway?
A: Yes, sir.

Q: Do you know Alvin de Rama?
A: Yes, sir.

x x x x x x x x x

Q: Mr. Witness, while you were at the tricycle terminal at Brgy. Labuin, Pila, Laguna that evening of April 11, 2000, did you see this Alvin de Rama?
A: Yes, sir.

Q: Where was he at that time?
A: He was then at Brgy. Labuin, sir.

Q: What was he doing at that time?
A: We were both parked, sir.

Q: [Were] you waiting for passengers at that time?
A: Yes, sir.

Q: Who parked ahead, you or Alvin de Rama?
A: Alvin de Rama parked ahead of me, sir.

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[25] TSN, July 29, 2002, pp. 9-10.

x x x x x x x x x[26]

Third. Alvin left the terminal with Arcenal, his lone passenger and back rider. Flores, who knew Arcenal personally since the latter was also a resident of Pila, and had once been a tricycle driver, positively identified Arcenal. In his direct testimony, Flores stated:

PROS. RODRIGO:
Q: And when this Alvin de Rama left, Mr. Witness, did he have any passenger or passengers?
A: There is, sir.

Q: And do you know or could you identify that passenger or passengers of Alvin de Rama when he left that terminal?
A: I know, sir.

Q: And who is that passenger of Alvin de Rama, Mr. Witness, when he left the terminal?
A: Jessie, sir.

Q: What is the family name of Jessie?
A: Arcenal, sir.

Q: Do you personally know this Jessie Arcenal?
A: Yes, sir.

x x x x x x x x x

Q: When you saw this Arcenal on board the tricycle being driven by Alvin de Rama, where was he seated?
A: Jessie Arcenal was then seated at the back of the motorcycle, sir.

Q: So you mean to say, Mr. Witness, that this Jessie Arcenal was a back rider?
A: Yes, sir.

Q: And under what circumstances, Mr. Witness, did you come to know this Jessie Arcenal?

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[26] TSN, January 22, 2003, pp. 6 and 8-9.

A: I personally know this Jessie Arcenal because he had also been a tricycle driver and in fact, he is also residing in our place, sir.

x x x x x x x x x[27]

Fourth. About 15 minutes after they left the terminal, Arcenal was scurrying on board Alvin's tricycle coming from the Forest Park's direction. Flores was *en route* to the terminal after he brought a passenger to Linga when he saw Arcenal driving the vehicle alone towards the direction of Barangay Labuin.

Fifth. At 6:05[28] a.m. on April 12, 2000, Alvin was found dead on the side of the road on Forest Park with his tricycle patently missing. According to the autopsy report, his cause of death was shock secondary to intra-cranial hemorrhage, secondary to trauma. Notably, there were three gaping wounds on the right and left occipital area (at the back of the head), and contusion hematoma on the entire posterior neck area.

Sixth. When the vehicle was recovered, bloodstains were noted on the motorcycle and the sidecar.

Seventh. The fingerprints lifted from the tricycle matched with Arcenal's right hand index finger. According to the supplemental report, Dactyloscopy Report No. F-051-00-A,[29] eleven (11) ridges of the fingerprints were identical in both the questioned and standard fingerprints. It proved that the lifted fingerprint labeled as "Q-3" is identical with the right fingerprint of Arcenal.[30]

"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

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[27] TSN, July 29, 2002, pp. 12-13.

[28] Records p. 20; Medico-Legal Necropsy Report.

[29] Records, p. 62.

[30] CA *rollo* p. 15.

gains possession of the thing, even if he has no opportunity to dispose of the same.[31] 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 prosecution was able to prove that there was unlawful taking of the vehicle. The fingerprints, which was confirmed as identical with Arcenal's, found on the vehicle not only substantiated the testimonies of Flores and Meras that he was indeed Alvin's passenger but also established that he had possession of the said 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.[32] Arcenal's fleeing with Alvin's tricycle showed his intent to gain. That it was later abandoned does not negate his intent.

Arcenal alleges that the prosecution's only evidence to prove that he was in possession of Alvin's tricycle was the testimony of Flores. He further claims that there is a possibility that when Flores allegedly saw him driving Alvin's tricycle, Alvin was alive and well and the killing had not yet taken place considering that it was not established whether the killing was committed before or after he was supposedly seen fleeing on board the tricycle.[33]

Such contentions fail scrutiny. The pieces of evidence — the gaping wounds and hematoma at the back of Alvin's head and neck, Arcenal who was Alvin's back rider passenger fled with the tricycle, and the bloodstains on the motorcycle and its side car — inevitably lead this Court to conclude that the assault happened

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[31] *People v. Lagat, supra* note 23, at 367.

[32] *Id*. at 368.

[33] CA *rollo* p. 43.

while Alvin was in the vehicle or was within its vicinity. These belied Arcenal's allegation that the killing could have been committed after he gained possession of the vehicle. The only logical conclusion that can be drawn from the totality of the foregoing facts and circumstances is that Arcenal, to the exclusion of others, is guilty of carnapping the tricycle and of killing Alvin in the course thereof.

Furthermore, the police failed to locate Arcenal after learning from witnesses that the latter was last seen with Alvin and was driving the vehicle alone thereafter. The police even received information that Arcenal was hiding in Mindoro. The Pila, Laguna PNP indorsed on January 15, 2001 the conduct of a manhunt. However, it was a year later, or in 2002 that they were able to arrest Arcenal following a tip that he was in Pakil, Laguna.[34] 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.[35]

Anent Arcenal's defense, he argues that his alibi must not be viewed with outright disfavor. He claims that he left the house on the night of the incident to buy food and returned home to eat, and that the same was not inconsistent with his earlier claim that his siblings gave him food.

This Court is not persuaded. 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.[36] It must be supported by credible corroboration from disinterested witnesses, and if not, is fatal to the accused.[37]

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[34] *Id.* at 21.

[35] *People v. Dela Cruz*, 459 Phil. 130, 137 (2003).

[36] *People v. Andy Regaspi*, G.R. No. 198309, September 7, 2015.

[37] *People v. Mallari*, 101 Phil. 267, 281 (2013).

In this case, Arcenal vehemently denied the accusations. However, 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 the crime. He did not present any evidence or testimony to corroborate the same.

The prosecution, on the other hand, ascertained Arcenal's identity as the perpetrator. Jurisprudence teaches that positive identification pertains essentially to proof of identity and not *per se* to that of being an eyewitness to the very act of commission of the crime. There may be instances where, although a witness may not have actually seen the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as for instance *when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime*. This type of positive identification forms part of circumstantial evidence, which, when taken together with other pieces of evidence constituting an unbroken chain, leads to only one fair and reasonable conclusion, which is that the accused is the author of the crime to the exclusion of all others.[38]

Here, the testimonies of Flores and Meras pointing to Arcenal as Alvin's back rider that night, coupled with the other circumstances, sufficiently establish the identity of the accused as the author of the crime to the exclusion of all others. Arcenal harps on the supposed inconsistencies on Flores's testimonies. Flores claimed that he saw Arcenal at Barangay Linga, however, Forest Park is in fact situated in Barangay Pinagbayanan. We find that such inconsistencies involve trivial matters that do not involve the essential elements of the crime. "Inaccuracies may in fact suggest that the witnesses are telling the truth and have not been rehearsed. Witnesses are not expected to remember every single detail of an incident with perfect or total recall."[39]

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[38] *People v. Gallarde*, 382 Phil. 718, 733 (2000). (Emphasis supplied).

[39] *People v. Alas*, 340 Phil. 423, 432 (1997).

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] Absent any showing that the trial judge acted arbitrarily, or overlooked, misunderstood, or misapplied some facts or circumstances of weight which would affect the result of the case, his assessment of the credibility of witnesses deserves high respect by the appellate court.[41] After a judicious examination of the records of this case, this Court finds no cogent reason to doubt the veracity of the findings and conclusions made by the trial court on the credibility of the prosecution witnesses' testimonies.

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**. (Emphasis supplied)

The RTC is correct in imposing the penalty of *reclusion perpetua*, considering that there is no proven aggravating circumstance that would warrant the imposition of the penalty

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[40] *People v. Abat*, 731 Phil. 304, 311 (2014).

[41] *People v. Christopher Elizalde y Sumagdon, et al.*, G.R. No. 210434, December 5, 2016.

of Death. 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.[42] Thus, Arcenal is ordered to pay the heirs of Alvin civil indemnity, moral damages, and exemplary damages in the amount of ₱75,000.00 each. Additionally, Arcenal is ordered to pay ₱50,000.00 as temperate damages, and pay interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this Decision.

WHEREFORE, the appeal is **DISMISSED**. The May 12, 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 05000, affirming the Decision dated November 30, 2010 of the Regional Trial Court, Branch 27, Santa Cruz, Laguna in Criminal Case No. SC-8602, which found accused-appellant Jesusano Arcenal y Aguilan guilty beyond reasonable doubt of the crime of Carnapping with homicide, sentencing him to suffer the penalty of *reclusion perpetua*, with all the accessory penalties, is hereby **AFFIRMED with MODIFICATIONS**: Arcenal is **ORDERED** to **PAY** the heirs of Alvin de Rama 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 this Decision until fully paid.

SO ORDERED.

Carpio (*Chairperson*), *Leonen*, and *Martires, JJ.*, concur.

Mendoza, J., on wellness leave.

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[42] *People v. Ireneo Jugueta*, G.R. No. 202124, April 5, 2016.

SECOND DIVISION

[G.R. No. 220054. March 27, 2017]

DEOGRACIA VALDERRAMA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and JOSEPHINE ABL VIGDEN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; ALL CRIMINAL ACTIONS SHALL BE PROSECUTED UNDER THE DIRECTION AND CONTROL OF THE PROSECUTOR.— The public prosecutor's conformity to the Motion to Reconsider is necessary. Rule 110, Section 5 of the Rules of Court states: Section 5. *Who Must Prosecute Criminal Actions.* — All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor. However, in Municipal Trial Courts or Municipal Circuit Trial Courts when the prosecutor assigned thereto or to the case is not available, the offended party, any peace officer, or public officer charged with the enforcement of the law violated may prosecute the case. This authority shall cease upon actual intervention of the prosecutor or upon elevation of the case to the Regional Trial Court. In *Laude v. Ginez-Jabalde*, this Court ruled that the required conformity of the public prosecutor was not a mere superfluity and was necessary to pursue a criminal action. A private party does not have the legal personality to prosecute the criminal aspect of a case, as it is the People of the Philippines who are the real party in interest. The criminal case must be under the direction and control of the public prosecutor. Thus, when the public prosecutor does not give his or her conformity to the pleading of a party, the party does not have the required legal personality to pursue the case.

2. ID.; MOTIONS; REQUISITES; HEARING OF MOTION AND NOTICE OF HEARING, REQUIRED IN MOTIONS FOR RECONSIDERATION.— Respondent did not set a hearing for the Motion to Reconsider. Instead, she simply submitted it for Metropolitan Trial Court's immediate consideration. x x x

[The] notice did not comply with Rule 15, Sections 4 (Hearing of Motion) and 5 (Notice of Hearing) of the Rules of Court: x x x These requirements are mandatory. Except for motions which the court may act on without prejudice to the adverse party, all motions must set a hearing. This includes motions for reconsideration. The notice of hearing on the motion must be directed to the adverse party and must inform him or her of the time and date of the hearing. Failure to comply with these mandates renders the motion fatally defective, equivalent to a useless scrap of paper. x x x The intention behind the notice requirements is to avoid surprises and to provide the adverse party a chance to study the motion and to argue meaningfully against it before the court's resolution. This Court has allowed exceptions to this rule when to do so would not cause prejudice to the other party nor violate his or her due process rights.

3. ID.; NEW TRIAL OR RECONSIDERATION; PERIOD FOR FILING THEREOF IS 15 DAYS; FAILING TO QUESTION AN ORDER OR DECISION WITHIN THE PERIOD PRESCRIBED BY LAW RENDERS THE ORDER OR DECISION FINAL AND BINDING.— This Court notes that the Motion to Reconsider was filed outside the period allowed by the rules as set in Rule 37, Section 1 of the Rules of Court: 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: . . . The period for taking an appeal is 15 days. Thus, respondent had 15 days to file her Motion to Reconsider. This period is non-extendible. Failing to question an order or decision within the period prescribed by law renders the order or decision final and binding. x x x The prosecution has the burden of proof to overturn the presumption of innocence of the accused. When the prosecution has been negligent in pursuing its case, and has failed to comply with procedural rules despite opportunities to sufficiently prove its allegations, the courts cannot extend it favors to the prejudice of the accused.

APPEARANCES OF COUNSEL

Soller & Omila Law Offices for petitioner.
Benedicto D. Tabaquero for private respondent.
Office of the Solicitor General for public respondent.

R E S O L U T I O N

LEONEN, *J.*:

For our resolution is a Petition for Review on Certiorari[1] assailing the Court of Appeals' March 9, 2015 Decision,[2] which dismissed petitioner's appeal to question the grant of the prosecution's motion for reconsideration despite procedural infirmities, and July 23, 2015 Resolution,[3] which denied reconsideration.

On July 16, 2004,[4] the city prosecutor filed before the Metropolitan Trial Court of Quezon City, Branch 43 four (4) Informations for grave oral defamation against Deogracia M. Valderrama (Valderrama), pursuant to a complaint filed by Josephine ABL Vigden (Vigden).[5]

During the trial on April 12, 2012, Vigden was present but the private prosecutor was absent despite notice. On motion of the defense, the Metropolitan Trial Court considered the

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[1] *Rollo*, pp. 20-34. This Petition was filed pursuant to Rule 45 of the Rules of Court.

[2] *Id*. at 36-42. The Decision was penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Magdangal M. De Leon and Jane Aurora C. Lantion of the Eighth Division, Court of Appeals, Manila.

[3] *Id*. at 45-46. The Resolution was penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Magdangal M. De Leon and Jane Aurora C. Lantion of the Former Eighth Division, Court of Appeals, Manila.

[4] *Id*. at 22.

[5] *Id*. at 37.

prosecution to have waived its right to present further evidence and required a formal offer of its documentary evidence within five (5) days.[6]

The prosecution failed to formally offer its evidence within five (5) days from the hearing.[7]

On May 8, 2012,[8] Vigden filed a Very Urgent Motion to Reconsider (Motion to Reconsider) explaining that the private prosecutor failed to appear because he had to manage his high blood pressure.[9]

Valderrama filed an opposition arguing that the public prosecutor did not give his conformity to Vigden's Motion to Reconsider, in violation of Rule 110, Section 5 of the Rules of Court, and the Motion to Reconsider's Notice of Hearing "was defective because it was not addressed to the parties, and did not specify the date and time of the hearing." She further argued that it was filed beyond the 15-day reglementary period allowed for motions for reconsideration. She likewise pointed out that there was no medical certificate attached to the Motion to Reconsider to prove the private prosecutor's sickness. Finally, she contended that the eight (8)-year delay in the prosecution of the cases violated Valderrama's right to speedy trial.[10]

In its Order[11] dated July 16, 2012, the Metropolitan Trial Court granted Vigden's Motion to Reconsider and set the continuation of the prosecution's presentation of further evidence for the last time on November 22, 2012:

After going over the same, the Court in the interest of substantial justice resolves to GRANT the aforesaid Motion, supra, however, the

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[6] *Id*.

[7] *Id*. at 57, Very Urgent Motion To Reconsider Order of April 12, 2012.

[8] *Id*. at 37.

[9] *Id*. at 58, Very Urgent Motion To Reconsider Order of April 12, 2012.

[10] *Id.* at 37.

[11] *Id*. at 66. The Order was penned by Presiding Judge Manuel B. Sta. Cruz, Jr. of Branch 43, Metropolitan Trial Court, Quezon City.

private complainant is hereby admonished to be ready to present her evidence to obviate any further delay in the proceedings of this case.

ACCORDINGLY, the Order of April 12, 2012, declaring the prosecution to have waived its right to present additional evidence is hereby LIFTED and SET ASIDE. Let the continuation of the presentation of prosecution's evidence be set for the last time on November 22, 2012 at 8:30 in the morning previously scheduled date for presentation of defense evidence. In the event the private complainant failed to adduce further evidence on the aforesaid date, the prosecution shall formally offer its evidence in open court.

The defense will be given another date for the presentation of its evidence on the aforesaid date of the hearing to insure the availability of the calendar of both counsels.

SO ORDERED.[12]

Valderrama moved to have the July 16, 2012 Order reconsidered. The Metropolitan Trial Court denied reconsideration in its Order[13] dated August 31, 2012:

Before this Court is the Motion for Reconsideration (re: Order dated July 16, 2012) filed by the accused, through counsel, there being no cogent reason for this Court to disturb the questioned order, the same is hereby DENIED for lack of merit.

As earlier ruled by this Court, continuation of the presentation of prosecution evidence shall proceed as scheduled on November 22, 2012 at 8:30 in the morning which is intransferrable and with a warning that in the event the private complainant failed to adduce further evidence, the prosecution shall ma[k]e an oral offer of its evidence in open court.

SO ORDERED.[14]

Valderrama filed a petition for certiorari before Branch 216, Regional Trial Court, Quezon City. In its Decision[15] dated May

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[12] *Id*.

[13] *Id*. at 72. The Order was penned by Presiding Judge Manuel B. Sta. Cruz, Jr. of Branch 43, Metropolitan Trial Court, Quezon City.

[14] *Id*.

[15] *Id*. at 114-118. The Decision was penned by Presiding Judge Alfonso C. Ruiz II of Branch 216, Regional Trial Court, Quezon City.

3, 2013, the Regional Trial Court found no grave abuse of discretion by the lower court and dismissed the petition for certiorari.[16]

The Court of Appeals affirmed the ruling of the Regional Trial Court in its Decision[17] dated March 9, 2015. It also denied reconsideration in its Resolution[18] dated July 23, 2015.

Hence, Valderrama filed this Petition praying for the reversal of the ruling of the Court of Appeals and the annulment of the Metropolitan Trial Court Orders dated July 16, 2012 and August 31, 2012.[19]

Valderrama argues that the Metropolitan Trial Court acted with grave abuse of discretion in granting the patently defective Motion to Reconsider. She contends that the Motion to Reconsider violated procedural rules and its grant was not a mere error of judgment.[20]

Valderrama quotes *Crisologo v. JEWM Agro-Industrial Corporation*,[21] in that "manifest disregard of the basic rules and procedures constitutes a grave abuse of discretion . . . Such level of ignorance is not a mere error of judgment."[22] Valderrama additionally cites *Pesayco v. Layague*[23] in that "a judge is presumed to know the law and when the law is so elementary, not to be aware of it constitutes gross ignorance of the law."[24]

Valderrama adds that failure to comply with Rule 14, Sections 4 and 5 of the Rules of Court renders the motion "a worthless

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[16] *Id*. at 118.

[17] *Id*. at 36-42.

[18] *Id*. at 45-46.

[19] *Id*. at 29.

[20] *Id*. at 27.

[21] 728 Phil. 315 (2014) [Per *J*. Mendoza, Third Division].

[22] *Rollo*, p. 26.

[23] 488 Phil. 455, 466 (2004) [Per *J*. Tinga, Second Division].

[24] *Rollo*, p. 28.

piece of paper . . . [that] the trial court [has] no authority to act upon."[25]

Vigden filed a Comment[26] to the Petition contending that there is no violation of law or procedural rule or any grave abuse of discretion on the part of the trial courts as both the parties were granted their day in court.[27] Valderrama was charged with four (4) counts of grave oral defamation, but has only been indicted for one (1) count.[28] Vigden contends that she deserves the opportunity to prove the three (3) remaining charges,[29] especially since the failure of the private prosecutor to appear in the hearing was due to medical reasons.[30]

Vigden further argues that Valderrama's acts belie her interest in a speedy disposition of the cases considering that she has been the one causing the suspension of the proceedings by elevating the rulings of the lower and appellate courts, filing an inhibition case,[31] and filing an appeal with the Department of Justice.[32] Delays were further caused by the parties' attempts in mediation.[33] Thus, delays in prosecution were caused by both parties and other court processes.[34]

The Office of the Solicitor General, in its Comment,[35] posits that the Court of Appeals correctly affirmed that no grave abuse of discretion was committed in allowing the prosecution to

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[25] *Id*.

[26] *Id*. at 153-168.

[27] *Id*. at 160.

[28] *Id*. at 160-161.

[29] *Id*. at 161.

[30] *Id*.

[31] *Id*. at 162.

[32] *Id*. at 164.

[33] *Id.*

[34] *Id*.

[35] *Id*. at 186-194.

continue its presentation of evidence.[36] It claims that there was no showing that the relaxation of the procedural rules was exercised arbitrarily, whimsically, or motivated by ill will.[37] It asserts that the Metropolitan Trial Court clearly weighed the parties' arguments and granted the Motion to Reconsider in the interest of substantial justice, to resolve the matter substantially on the merits, and not on technicalities.[38] It finally argues that if the Metropolitan Trial Court committed an error, it was an error of judgment, not of jurisdiction, for which certiorari will not lie.[39]

The sole issue in this case is whether the Metropolitan Trial Court committed grave abuse of discretion in granting the Motion to Reconsider to allow the prosecution to continue its presentation of evidence.

Petitioner alleges several procedural lapses in Vigden's Motion to Reconsider, thus:

a. The Motion did not bear the conformity of the public prosecutor in violation of Section 5 Rule 110 of the Rules on Criminal Procedure requiring all criminal actions to be prosecuted under the direction and control of the public prosecutor;
b. It does not contain any notice addressed to the accused in violation of Section 5 Rule 15 Rules of Court;
c. It does not indicate the date and time it was to be heard by the court in violation of Section 5 Rule 15 of the Rules of Court;
d. It is filed beyond the fifteen (15)-day reglementary period required under Section 1 Rule 37 Rules of Court;
e. It does not contain a statement of material dates showing that it is filed within fifteen (15) days from its receipt by the private prosecutor;
f. It is neither verified nor accompanied by affidavits in support of the factual allegations that they contain; and

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[36] *Id*. at 188-189.

[37] *Id*. at 190.

[38] *Id*.

[39] *Id*. at 190-191.

g. It does not deny that private respondent refused to cooperate with the public prosecutor and present evidence at the hearing on April 12, 2012; neither did it offer any explanation or justification for such refusal to cooperate.[40]

We grant the Petition. The respondent's Motion to Reconsider was fatally defective and should have been denied by the Metropolitan Trial Court.

I

The public prosecutor's conformity to the Motion to Reconsider is necessary. Rule 110, Section 5 of the Rules of Court states:

> Section 5. *Who Must Prosecute Criminal Actions.* — All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor. However, in Municipal Trial Courts or Municipal Circuit Trial Courts when the prosecutor assigned thereto or to the case is not available, the offended party, any peace officer, or public officer charged with the enforcement of the law violated may prosecute the case. This authority shall cease upon actual intervention of the prosecutor or upon elevation of the case to the Regional Trial Court.

In *Laude v. Ginez-Jabalde*,[41] this Court ruled that the required conformity of the public prosecutor was not a mere superfluity and was necessary to pursue a criminal action.[42] A private party does not have the legal personality to prosecute the criminal aspect of a case, as it is the People of the Philippines who are the real party in interest.[43] The criminal case must be under the direction and control of the public prosecutor.[44] Thus, when the public prosecutor does not give his or her conformity to

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[40] *Id.* at 27.

[41] G.R. No. 217456, November 24, 2015, 775 SCRA 408 [Per *J.* Leonen, *En Banc*].

[42] *Id.* at 431.

[43] *Id*.

[44] *Id.*

the pleading of a party, the party does not have the required legal personality to pursue the case.[45]

In this case, there is no conformity from the public prosecutor. This circumstance was not denied by the private respondent. Private respondent merely claimed that the the Office of the City Prosecutor did not object to the filing of the Motion to Reconsider.[46] The Office of the City Prosecutor was only furnished with a copy of the Motion to Reconsider and it opens with the phrase "[p]rivate complaining witness, *through counsel and the Office of the City Prosecutor of Quezon City*, and to this Honorable Court respectfully states . . ."[47] This is not sufficient. Since the Motion to Reconsider pertains to the presentation of the prosecution's evidence, it involves the criminal aspect of the case and, thus, cannot be considered without the public prosecutor's conforme.

II

Respondent also did not set a hearing for the Motion to Reconsider. Instead, she simply submitted it for Metropolitan Trial Court's immediate consideration.[48] Thus, the notice attached to the pleading stated:

GREETINGS:

Please submit the foregoing Motion for immediate consideration and resolution of the Honorable Court upon receipt hereof.

City of Parañaque for Quezon City
May 7, 2012[49]

This notice did not comply with Rule 15, Sections 4 and 5 of the Rules of Court:

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[45] *Id*.

[46] *Rollo*, p. 161.

[47] *Id*. at 57.

[48] *Id*. at 60.

[49] *Id*.

Section 4. *Hearing of motion*. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

Section 5. *Notice of hearing*. — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

These requirements are mandatory.[50] Except for motions which the court may act on without prejudice to the adverse party, all motions must set a hearing.[51] This includes motions for reconsideration.

The notice of hearing on the motion must be directed to the adverse party and must inform him or her of the time and date of the hearing.[52] Failure to comply with these mandates renders the motion fatally defective, equivalent to a useless scrap of paper.[53]

In *De la Peña v. De la Peña*, this Court enumerated the cases where it consistently ruled that a proper notice of hearing was necessary in filing motions for reconsideration:[54]

In *Pojas v. Gozo-Dadole* we had occasion to rule on the issue of whether a motion for reconsideration without any notice of hearing tolls the running of the prescriptive period. In *Pojas*, petitioner received copy of the decision in Civil Case No. 3430

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[50] *De la Peña v. De la Peña*, 327 Phil. 936, 941 (1996) [Per *J.* Bellosillo, First Division].

[51] *Id.*

[52] *Id*. at 942.

[53] *Id*.

[54] 327 Phil. 936, 941 (1996) [Per *J.* Bellosillo, First Division].

of the Regional Trial Court of Tagbilaran on 15 April 1986. The decision being adverse to him petitioner filed a motion for reconsideration. *For failing to mention the date when the motion was to be resolved as required in Sec. 5, Rule 15, of the Rules of Court, the motion for reconsideration was denied.* A second motion for reconsideration met the same fate. On 2 July 1986 petitioner filed a notice of appeal but the same was denied for being filed out of time as "the motion for reconsideration which the Court ruled as *pro forma* did not stop the running of the 15-day period to appeal."

In resolving the issue of whether there was grave abuse of discretion in denying petitioner's notice of appeal, this Court ruled —

> *Section 4 of Rule 15 of the Rules of Court requires that notice of motion be served by the movant on all parties concerned at least three (3) days before its hearing. Section 5 of the same Rule provides that the notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion. A motion which does not meet the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is considered a worthless piece of paper which the clerk has no right to receive and the court has no authority to act upon. Service of copy of a motion containing notice of the time and place of hearing of said motion is a mandatory requirement and the failure of the movant to comply with said requirements renders his motion fatally defective.*

. . . . . .

In *In re: Almacen* defendant lost his case in the lower court. His counsel then filed *a motion for reconsideration but did not notify the adverse counsel of the time and place of hearing of said motion*. The Court of Appeals dismissed the motion for reason that "the motion for reconsideration dated July 5, 1966 does not contain a notice of time and place of hearing thereof and is, therefore a useless piece of paper which did not interrupt the running of the period to appeal, and, consequently, the appeal was perfected out of time." When the case was brought to us, we reminded counsel for the defendant that —

> As a law practitioner who was admitted to the bar as far back as 1941, Atty. Almacen knew — or ought to have known — that a motion for reconsideration to stay the running of the period of (sic) appeal, the movant must not only serve a copy

> of the motion upon the adverse party . . . *but also notify the adverse party of the time and place of hearing*. . .

Also, in *Manila Surety and Fidelity Co., Inc. v. Bath Construction and Company* we ruled —

> The written notice referred to evidently is that prescribed for motions in general by Rule 15, Sections 4 and 5 (formerly Rule 26), which provide that such *notice shall state the time and place of hearing and shall be served upon all the parties concerned at least three days in advance*. And according to Section 6 of the same Rule no motion shall be acted upon by the court without proof of such notice. Indeed it has been held that in such a case the motion is nothing but a useless piece of paper. The reason is obvious; *unless the movant sets the time and place of hearing the court would have no way to determine whether that party agrees to or objects to the motion, and if he objects, to hear him on his objection, since the Rules themselves do not fix any period within which he may file his reply or opposition*.

In fine, the abovecited cases confirm that the requirements laid down in Sec. 5 Rule 15 of the Rules of Court that the notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion, are mandatory. If not religiously complied with, they render the motion *pro forma*. As such the motion is a useless piece of paper that will not toll the running of the prescriptive period.[55] (Citations omitted, emphases supplied)

The intention behind the notice requirements is to avoid surprises and to provide the adverse party a chance to study the motion and to argue meaningfully against it before the court's resolution.[56]

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[55] *Id*. at 939-943.

[56] *Ama Computer College, Inc. v. Immaculate Conception Academy*, G.R. No. 161398 (Notice), January 21, 2015, citing *Tan v. Court of Appeals*, 356 Phil. 1058 (1998) [Per J. Panganiban, First Division], *Cruz v. Court of Appeals*, 436 Phil. 641 (2002) [Per J. Carpio, Third Division], *Cledera v. Sarmiento*, 148-A Phil. 468 (1971) [Per J. Makasiar, *En Banc*], *PNB v. Donasco*, 117 Phil. 429 (1963) [Per J. Labrador, *En Banc*], *Manakil v. Revilla*, 42 Phil. 81 (1921) [Per J. Johnson, Second Division], *Roman Catholic Bishop of Lipa v. Municipality of Unisan*, 44 Phil. 866 (1920) [Per J. Araullo, First Division], *Director of Lands v. Sanz*, 45 Phil. 117 (1923) [Per J. Johnson, First Division].

This Court has allowed exceptions to this rule when to do so would not cause prejudice to the other party nor violate his or her due process rights.[57]

But while petitioner had the opportunity to argue against the Motion to Reconsider through her Vehement Opposition,[58] it cannot be said that she was not prejudiced by its grant.

This Court notes that the Motion to Reconsider was filed outside the period allowed by the rules as set in Rule 37, Section 1 of the Rules of Court:

> 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: . . .

The period for taking an appeal is 15 days.[59] Thus, respondent had 15 days to file her Motion to Reconsider. This period is non-extendible.[60] Failing to question an order or decision within the period prescribed by law renders the order or decision final and binding.[61]

The Metropolitan Trial Court issued its Order on April 12, 2012 and required the prosecution to formally offer its documentary evidence within five (5) days from that date.[62]

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[57] G.R. No. 217456, November 24, 2015 [Per *J.* Leonen, *En Banc*].

[58] *Rollo*, pp. 61-65, Vehement Opposition.

[59] RULES OF COURT, Rule 122, Sec. 6 provides:

> Section 6. When appeal to be taken. — An appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from ...

[60] *Rivelisa Realty, Inc. v. First Sta. Clara Builders Corp.*, 724 Phil. 508, 516 (2014) [Per *J.* Perlas-Bernabe, Second Division].

[61] *Id*.

[62] *Rollo*, p. 37.

The prosecution failed to formally offer its evidence within five (5) days from the hearing. It also failed to file the Motion to Reconsider within 15 days. The prosecution had 15 days from April 12, 2012, or until April 27, 2012 to file its Motion to Reconsider. The private prosecutor filed her Motion to Reconsider only on May 8, 2012, or *26 days* after the Metropolitan Trial Court issued its Order.[63]

Respondent's private counsel argued that the respondent "misapprehended what resulted from the hearing" and "was unable to report back what happened."[64] However, knowing that a hearing transpired on April 12, 2012, private counsel had the duty to follow the course of his case and to keep his files updated as part of his duty to serve his client with competence and diligence.[65] His failure to timely file the proper motion is inexcusable.

The prosecution has the burden of proof to overturn the presumption of innocence of the accused. When the prosecution has been negligent in pursuing its case, and has failed to comply with procedural rules despite opportunities to sufficiently prove its allegations, the courts cannot extend it favors to the prejudice of the accused.

In *Spouses Bergonia v. Court of Appeals*:[66]

> The petitioners ought to be reminded that the bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed

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[63] *Id.*

[64] *Id*. at 58.

[65] *Zarate-Bustamante v. Libatique*, 418 Phil. 249, 254 (2001) [Per *J.* Quisimbing, Second Division].

[66] 680 Phil. 334 (2012) [Per *J.* Reyes, Second Division].

except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[67] (Citation omitted)

There is grave abuse of discretion when there is a refusal to act in contemplation of law or a gross disregard of the Constitution, law, or existing jurisprudence.[68] In such a case, there is a whimsical and capricious exercise of judgment amounting to lack of jurisdiction.[69]

Since Vigden's Motion to Reconsider was laden with procedural defects, the Metropolitan Trial Court acted with grave abuse of discretion amounting to lack or excess of juridiction. Thus, its orders should be declared void.

WHEREFORE, this Court resolves to **GRANT** the Petition for Review on Certiorari. The Court of Appeals' March 9, 2015 Decision and July 23, 2015 Resolution are **REVERSED**. The prosecution is deemed to have waived its right to present further evidence. This case is **REMANDED** back to the Metropolitan Trial Court of Quezon City, Branch 43 for its proper disposition with **DUE** and **DELIBERATE** dispatch.

SO ORDERED.

Carpio (*Chairperson*), *Peralta*, and *Martires, JJ.*, concur.

Mendoza, J., on official leave.

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[67] *Id.* at 343.

[68] *Republic v. Caguioa*, 704 Phil. 315, 333 (2013) [Per *J.* Brion, Second Division].

[69] *Id.*

EN BANC

[G.R. No. 227155. March 28, 2017]

JOEL T. MATURAN, *petitioner, vs.* **COMMISSION ON ELECTIONS and ALLAN PATIÑO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER ONLY IN CASE OF GRAVE ABUSE OF DISCRETION.— The Court, not being a trier of facts, only steps in when there is a showing that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction. As long as there is a case or controversy involving demandable rights and an exercise of power allegedly committed in grave abuse of discretion, the Court is duty-bound to determine whether that power was exercised capriciously, arbitrarily, whimsically, or without basis under the law or the Constitution. Should the Court find the COMELEC to have deviated from its mandate, it shall also be our duty to redirect the COMELEC's course along constitutional channels. x x x In *certiorari*, the petitioner carries the burden of proving not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction, on the part of the public respondent for its issuance of the impugned resolutions. *Grave abuse of discretion* is committed "when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it 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 or to act at all in contemplation of law."

2. POLITICAL LAW; ELECTION LAWS; ACT FOR SYNCHRONIZED ELECTIONS AND ELECTORAL REFORMS (RA 7166); SECTION 14 REQUIRING CANDIDATES FOR PUBLIC OFFICE TO SUBMIT STATEMENT OF CONTRIBUTIONS AND EXPENDITURES (SOCE); PENALTY FOR VIOLATION IS PERPETUAL DISQUALIFICATION TO HOLD

PUBLIC OFFICE; UPHELD.— [P]etitioner submits that he only failed to submit his SOCE once, in 2010. He pleads good faith because he thought that he was no longer required to submit his SOCE for the 2013 elections because of his having withdrawn from the mayoral race in that year. His plea of good faith is undeserving of consideration. The petitioner should have paid heed to the 1995 ruling in *Pilar v. Commission of Elections*, which the COMELEC properly cited in its assailed resolution. Based on *Pilar*, every candidate, including one who meanwhile withdraws his candidacy, is required to file his SOCE by Section 14 of R.A. No. 7166. x x x We have always deferred to the wisdom of Congress in enacting a law. We can only enforce a statute like R.A. No. 7166 unless there is a clear showing that it contravenes the Constitution. x x x [A] review of R.A. No. 7166 convincingly indicates that perpetual disqualification from public office has been prescribed as a penalty for the repeated failure to file the SOCE and does not constitute cruel, degrading and inhuman punishment. x x x Moreover, that Congress has deemed fit to impose the penalty of perpetual disqualification on candidates who repeatedly failed to file their SOCEs cannot be the subject of judicial inquiry. Congress has the absolute discretion to penalize by law with perpetual disqualification from holding public office in addition to administrative fines the seekers of public office who fail more than once to file their SOCEs. Such penalty is intended to underscore the need to file the SOCE as another means of ensuring the sanctity of the electoral process.

APPEARANCES OF COUNSEL

Arcilla Law Office for petitioner.

Joventino V. Diamanta and *Smith General* for private respondent.

The Solicitor General for public respondent.

D E C I S I O N

BERSAMIN, *J.*:

The penalty of perpetual disqualification to hold public office may be properly imposed on a candidate for public office who repeatedly fails to submit his Statement of Contributions and

Expenditures (SOCE) pursuant to Section 14 of Republic Act No. 7166.[1] The penalty does not amount to the cruel, degrading and inhuman punishment proscribed by the Bill of Rights.

The Case

Assailed by petition for *certiorari* are the resolutions dated June 6, 2016[2] and September 8, 2016[3] promulgated by the Commission on Elections (COMELEC) respectively imposing upon the petitioner the penalty of perpetual disqualification from holding public office due to his repeated failure to submit his SOCE pursuant to Section 14 of R.A. No. 7166, and denying his motion for reconsideration.

Antecedents

On October 16, 2015, the petitioner filed his certificate of candidacy for the position of Provincial Governor of Basilan to be contested in the 2016 National and Local Elections. Allan Patiño, claiming to be a registered voter of Basilan, filed a petition for the disqualification of the petitioner on the ground that based on the list issued by the COMELEC Campaign Finance Officer the latter had failed to file his SOCE corresponding to the 2010 and 2013 elections.[4]

The petitioner opposed the petition for his disqualification by arguing that the petition had been rendered moot on account of his withdrawal from the mayoralty race during the 2013 elections; and that, consequently, he could only be held accountable for the failure to file his SOCE corresponding to the 2010 elections when he ran for Provincial Governor of Basilan, and for which he had already paid a fine of ₱15,000.00.[5]

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[1] *An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes*.

[2] *Rollo*, pp. 44-50.

[3] *Id*. at 51-56.

[4] *Id*. at 24-30.

[5] *Id*. at 46.

On June 6, 2016, the COMELEC First Division issued the first assailed resolution finding merit in the petition for his disqualification, and declaring the petitioner disqualified to hold public office, to wit:

In this case, Patiño alleged in his petition that Maturan violated Section 14 of R.A. No. 7166 because he failed to file his SOCE for the 2010 and 2013 elections based on the List of Candidates Subject to Perpetual Disqualification posted by the Commission's Campaign Finance Officer ("CFO"). Upon verification from the CFO, Maturan in fact does not have a SOCE on record for the 2010 elections. Accordingly, per COMELEC Resolution No. 15-0495, an administrative fine in the amount of Php 15,000.00 was imposed upon him. Maturan admitted that he paid said fine on 23 November 2015.

Likewise, for his 2013 candidacy, Maturan does not have a SOCE on record with the CFO. Maturan argued that by virtue of the withdrawal of his candidacy on 12 May 2013, just a day before the elections, he is not required to file his SOCE.

Again, in the case of *Pilar vs. COMELEC*, the Supreme Court elucidated that:

> Petitioner argues that he cannot be held liable for failure to file a statement of contributions and expenditures because he was a 'non-candidate,' having withdrawn his certificate of candidacy three days after its filing. Petitioner posits that "it is . . . clear from the law that the candidate must have entered the political contest, and should have either won or lost." (citation omitted)
>
> Petitioner's argument is without merit.
>
> Section 14 of R.A. No. 7166 states that "every candidate" has the obligation to file his statement of contributions and expenditures.
>
> x x x x x x x x x
>
> In the case at bench, as the law does not make any distinction or qualification as to whether the candidate pursued his candidacy or withdrew the same, the term "every candidate" must be deemed to refer not only to a candidate who pursued his campaign, but also to one who withdrew his candidacy.

> The COMELEC, the body tasked with the enforcement and administration of all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall (citation omitted), issued Resolution No. 2348 in implementation or interpretation of the provisions of Republic Act No. 7166 on election contributions and expenditures. Section 13 of Resolution No. 23488 categorically refers to "all candidates who filed their certificates of candidacy."
>
> Furthermore, Section 14 of the law uses the word "shall." As a general rule, the use of the word "shall" in a statute implies that the statute is mandatory, and imposes a duty which may be enforced, particularly if public policy is in favor of this meaning or where public interest is involved. We apply the general rule. (citations omitted)

Accordingly, the Commission (*First Division*) finds that Maturan likewise failed to file his SOCE within thirty (30) days after the 13 May 2013 elections for which he filed his candidacy for Mayor of Ungkaya Pukan, Basilan. Clearly, Maturan did not file his SOCE twice – in 2010 and 2013 elections – in violation of Section 14 of R.A. No. 7166.

WHEREFORE, premises considered, the Commission (*First Division*) **RESOLVED**, as it hereby **RESOLVES**, to **GRANT** the instant petition, **JOEL T. MATURAN** is hereby declared **PERPETUALLY DISQUALIFIED TO HOLD PUBLIC OFFICE.**

x x x x x x x x x

SO ORDERED.[6]

Aggrieved, the petitioner appealed to the COMELEC *En Banc*, which denied his appeal on September 8, 2016.

Issues

The petitioner submits the following issues for our consideration:

I

WHETHER OR NOT THE PUBLIC RESPONDENT HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION

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[6] *Id*. at 48-50.

AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DECLARED THAT PETITIONER MATURAN IS PERPETUALLY DISQUALIFIED TO HOLD PUBLIC OFFICE

II

WHETHER OR NOT THE PUBLIC RESPONDENT HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT FAILED TO DISMISS THE PETITION FOR DISQUALIFICATION FOR BEING MOOT AND ACADEMIC

III

WHETHER OR NOT THE IMPOSITION OF PERPETUAL DISQUALIFICATION TO HOLD PUBLIC OFFICE FOR THOSE WHO FAILED TO FILE THEIR SOCE MORE THAN ONCE IS GRAVELY EXCESSIVE AND DISPROPORTIONATE[7]

Ruling of the Court

We dismiss the petition for *certiorari* for its lack of merit.

The Court, not being a trier of facts, only steps in when there is a showing that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction.[8] As long as there is a case or controversy involving demandable rights and an exercise of power allegedly committed in grave abuse of discretion, the Court is duty-bound to determine whether that power was exercised capriciously, arbitrarily, whimsically, or without basis under the law or the Constitution. Should the Court find the COMELEC to have deviated from its mandate, it shall also be our duty to redirect the COMELEC's course along constitutional channels.[9]

The petitioner's allegation of grave abuse of discretion on the part of the COMELEC for imposing upon him the penalty

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

[8] *Basmala v. Commission on Elections*, G.R. No. 176724, October 6, 2008, 567 SCRA 664.

[9] *Ejercito v. Commission on Elections*, G.R. No. 223300, May 31, 2016 (Resolution).

of perpetual disqualification to hold public office is hollow. In imposing the penalty, the COMELEC clearly acted within the bounds of its jurisdiction in view of the clear language of Section 14 of R.A. No. 7166, *viz.*:

> Section 14. *Statement of Contributions and Expenditures: Effect of Failure to File Statement.* — Every candidate and treasurer of the political party shall, within thirty (30) days after the day of the election, file in duplicate with the offices of the Commission the full, true and itemized statement of all contributions and expenditures in connection with the election.
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> x x x x x x x x x
>
> Except candidates for elective barangay office, failure to file the statements or reports in connection with electoral contributions and expenditures are required herein shall constitute an administrative offense for which the offenders shall be liable to pay an administrative fine ranging from One thousand pesos (₱1,000.00) to Thirty thousand pesos (₱30,000.00), in the discretion of the Commission.
>
> The fine shall be paid within thirty (30) days from receipt of notice of such failure; otherwise, it shall be enforceable by a writ of execution issued by the Commission against the properties of the offender.
>
> x x x x x x x x x
>
> **For the commission of a second or subsequent offense under this section, the administrative fine shall be from Two thousand pesos (₱2,000.00) to Sixty thousand pesos (₱60,000.00), in the discretion of the Commission. In addition, the offender shall be subject to perpetual disqualification to hold public office.** (Bold underscoring is supplied for emphasis)

Nonetheless, the petitioner submits that he only failed to submit his SOCE once, in 2010. He pleads good faith because he thought that he was no longer required to submit his SOCE for the 2013 elections because of his having withdrawn from the mayoral race in that year.

His plea of good faith is undeserving of consideration.

The petitioner should have paid heed to the 1995 ruling in *Pilar v. Commission of Elections*,[10] which the COMELEC properly cited in its assailed resolution. Based on *Pilar*, every candidate, including one who meanwhile withdraws his candidacy, is required to file his SOCE by Section 14 of R.A. No. 7166. Accordingly, the petitioner could not invoke good faith on the basis of his having withdrawn his candidacy a day before the 2013 elections.

Still, in a final attempt to evade liability, the petitioner describes the penalty of perpetual disqualification as excessive, harsh and cruel, and, consequently, unconstitutional pursuant to Section 19(1), Article III of the 1987 Constitution, which pertinently provides:

> Section 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. x x x .

He contends that the failure to file the SOCE is an offense far less grave than the serious crimes under the *Revised Penal Code* and the grave offenses under the civil service laws. Accordingly, equating the non-filing of the SOCE with the latter offenses is irrational and unwarranted.

The petitioner's contention does not impress.

We have always deferred to the wisdom of Congress in enacting a law. We can only enforce a statute like R.A. No. 7166 unless there is a clear showing that it contravenes the Constitution. The petitioner has not demonstrated herein how R.A. No. 7166 could have transgressed the Constitution. On the contrary, a review of R.A. No. 7166 convincingly indicates that perpetual disqualification from public office has been prescribed as a penalty for the repeated failure to file the SOCE and does not constitute cruel, degrading and inhuman punishment.

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[10] G.R. No. 115245, July 11, 1995, 245 SCRA 759.

We have already settled that the constitutional proscription under the Bill of Rights extends only to situations of extreme corporeal or psychological punishment that strips the individual of his humanity. The proscription is aimed more at the form or character of the punishment rather than at its severity, as the Court has elucidated in *Lim v. People*,[11] to wit:

> Settled is the rule that a punishment authorized by statute is not cruel, degrading or disproportionate to the nature of the offense unless it is flagrantly and plainly oppressive and wholly disproportionate to the nature of the offense as to shock the moral sense of the community. **It takes more than merely being harsh, excessive, out of proportion or severe for a penalty to be obnoxious to the Constitution.** Based on this principle, the Court has consistently overruled contentions of the defense that the penalty of fine or imprisonment authorized by the statute involved is cruel and degrading.
>
> In *People vs. Tongko*, this Court held that **the prohibition against cruel and unusual punishment is generally aimed at the form or character of the punishment rather than its severity in respect of its duration or amount, and applies to punishments which never existed in America or which public sentiment regards as cruel or obsolete. This refers, for instance, to those inflicted at the whipping post or in the pillory, to burning at the stake, breaking on the wheel, disemboweling and the like. The fact that the penalty is severe provides insufficient basis to declare a law unconstitutional and does not, by that circumstance alone, make it cruel and inhuman.** (Bold underscoring is supplied for emphasis)

Moreover, that Congress has deemed fit to impose the penalty of perpetual disqualification on candidates who repeatedly failed to file their SOCEs cannot be the subject of judicial inquiry. Congress has the absolute discretion to penalize by law with perpetual disqualification from holding public office in addition to administrative fines the seekers of public office who fail more than once to file their SOCEs.

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[11] G.R. No. 149276, September 27, 2002, 390 SCRA 194, 198-199.

Such penalty is intended to underscore the need to file the SOCE as another means of ensuring the sanctity of the electoral process.

In *certiorari*, the petitioner carries the burden of proving not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction, on the part of the public respondent for its issuance of the impugned resolutions.[12] *Grave abuse of discretion* is committed "when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it 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 or to act at all in contemplation of law."[13] Alas, not only did the petitioner fail to discharge his burden, he also succeeded in making it evident that the COMELEC did not gravely abuse its discretion in imposing on the petitioner the penalty of perpetual disqualification from holding public office due to his repeated violation of Section 14 of R.A. No. 7166.

ACCORDINGLY, the Court **DISMISSES** the petition for *certiorari* for lack of merit; and **DIRECTS** the petitioner to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Mendoza, Reyes, Leonen, Jardeleza, Caguioa, Martires, and *Tijam, JJ.,* concur.

Perlas-Bernabe, J., on official leave.

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[12] *Suliguin v. Commission on Elections*, G. R. No. 166046, March 23, 2006, 485 SCRA 219, 233.

[13] *Reyes-Tabujara v. Court of Appeals*, G. R. No. 172813, July 20, 2006, 495 SCRA 844, 857-858.

THIRD DIVISION

[G.R. No. 178591. March 29, 2017]

SM SYSTEMS CORPORATION (formerly SPRINGSUN MANAGEMENT SYSTEMS CORPORATION), *petitioner, vs.* **OSCAR CAMERINO, EFREN CAMERINO, CORNELIO MANTILE, DOMINGO ENRIQUEZ AND HEIRS OF NOLASCO DEL ROSARIO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AN ACT TO ORDAIN THE AGRICULTURAL LAND REFORM CODE AND TO INSTITUTE LAND REFORMS (RA 3844); LIMITATION ON LAND RIGHTS; PROHIBITION ON THE TRANSFER OF THE RIGHT OF REDEMPTION ACQUIRED PURSUANT TO AGRARIAN LAWS; CASE AT BAR.— While Civil Case No. 05-172 had already been dismissed due to the withdrawal by the farmers themselves of their petition to revoke the Irrevocable Power of Attorney (IPA) before the RTC, the Court still finds Nocom to be without the legal personality to substitute the former as a party in the redemption case. It is settled that the provisions of existing laws are read into contracts and deemed a part thereof. Section 62 of Republic Act (R.A.) No. 3844 clearly provides: Sec. 62. *Limitation on Land Rights*.—Except in case of hereditary succession by one heir, landholdings acquired under this Code may not be resold, mortgaged, encumbered, or transferred until after the lapse of ten years from the date of full payment and acquisition and after such ten-year period, any transfer, sale or disposition may be made only in favor of persons qualified to acquire economic family-size farm units in accordance with the provisions of this Code x x x. *Tayag v. Lacson* unequivocally emphasizes the prohibition on the transfer of the right of redemption acquired pursuant to agrarian laws. x x x In the case before this Court, the IPA issued by the farmers conferred upon Nocom the rights to "*sell, assign, transfer, dispose of, mortgage and alienate*" the subject three parcels of land and "*procure the necessary transfer certificate of titles in his name as the absolute owner*

of said properties." The said IPA is nothing less but a conveyance of the rights of the farmers to Nocom, hence, invalid for being an affront against agrarian laws. Section 62 of R.A. No. 3844 explicitly states that a transfer of the rights over agricultural leasehold acquired by a farmer can only be done after the lapse of 10 years reckoned from full payment or acquisition thereof, and only in favor of a person, who is qualified to be a beneficiary under agrarian laws. Both requisites are absent in the instant case.

2. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; COMPROMISE AGREEMENT AFTER FINAL JUDGMENT IS ALLOWED; ELEMENTS.— "A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced." Compromise is a form of amicable settlement that is not only allowed, but also encouraged in civil cases. Contracting parties may establish such stipulations, clauses, terms, and conditions as they deem convenient, provided that these are not contrary to law, morals, good customs, public order, or public policy. Rights may be waived through a compromise agreement, notwithstanding a final judgment that has already settled the rights of the contracting parties. To be binding, the compromise must be shown to have been voluntarily, freely and intelligently executed by the parties, who had full knowledge of the judgment. x x x There is no justification to disallow a compromise agreement, solely because it was entered into after final judgment. The validity of the agreement is determined by compliance with the requisites and principles of contracts, not by when it was entered into. As provided by the law on contracts, a valid compromise must have the following elements: (1) the consent of the parties to the compromise; (2) an object certain that is the subject matter of the compromise; and (3) the cause of the obligation that is established.

3. LABOR AND SOCIAL LEGISLATION; RA 6389 AMENDING RA 3844, THE AGRICULTURAL LAND REFORM CODE; LESSEE'S RIGHT OF REDEMPTION; CAN BE EXERCISED SEPARATELY BY EACH OF THE FARMERS IN PROPORTION TO THE AREA OF THE AGRICULTURAL LAND THEY CULTIVATED.— Section 12 of R.A. No. 3844 originally provided: Sec. 12. *Lessee's Right of Redemption.* – In case the landholding is sold to a

> third person without the knowledge of the agricultural lessee, the latter shall have the right to redeem the same at a reasonable price and consideration. **Provided, That the entire landholding sold must be redeemed**: x x x However, in view of its amendment by Section 12 of R.A. No. 6389, [the caveat now reads: x x x **Provided, that where there are two or more agricultural lessees, each shall be entitled to said right of redemption only to the extent of the area actually cultivated by him.** x x x Considering the foregoing, it is logical to conclude that the right of redemption can be exercised separately by each of the farmers in proportion to the area of the agricultural land they cultivated. x x x [Further,] [w]hile the right of redemption is available to the farmers, it need not be exercised and can be waived. There is no law disallowing such waiver and it is not within the contemplation of transfers prohibited by Section 62 of R.A. No. 3844.

APPEARANCES OF COUNSEL

Pizzaras & Associates Law Office for petitioner.
Gilberto C. Alfafara for respondents.

D E C I S I O N

REYES, *J.*:

For review in the instant petition[1] is the Decision[2] rendered on October 23, 2006 and Resolution[3] issued on June 29, 2007 by the Court of Appeals (CA) in CA-G.R. SP No. 92994. The CA dismissed the Petition for *Certiorari*[4] filed by the herein petitioner, SM Systems Corporation (SMS), formerly Springsun Management Systems Corporation, seeking to set aside the Orders

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[1] *Rollo*, pp. 10-51.

[2] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Rebecca De Guia-Salvador and Ramon R. Garcia concurring; *id*. at 61-77.

[3] *Id*. at 79-80.

[4] *Id*. at 475-511.

issued by the Regional Trial Court (RTC) of Muntinlupa City, Branch 256[5] on September 7, 2005[6] and December 16, 2005[7] in Civil Case No. 95-020, a complaint for redemption involving three parcels of agricultural land located in Muntinlupa City. Through the two orders, the RTC invalidated the compromise agreement entered into by and between SMS and four of the herein respondents, Efren Camerino (Efren), Cornelio Mantile (Cornelio), Domingo Enriquez (Domingo) and the Heirs of Nolasco del Rosario (Nolasco).[8] The RTC also denied SMS' motions (a) to hold in abeyance the execution of the decision allowing redemption; (b) to quash the writ of execution; and (c) for Honorable Judge Alberto L. Lerma (Judge Lerma) to inhibit himself from further issuing orders.

Facts and Issues

In the Resolution[9] dated July 26, 2010, the Court summarized the facts and issues of the case as follows:

> Victoria Homes, Inc. (Victoria Homes) was the registered owner of three (3) lots (subject lots), covered by Transfer Certificate of Title (TCT) Nos. (289237) S-6135, S-72244, and (289236) S-35855, with an area of 109,451 square meters, 73,849 sq m, and 109,452 sq m, respectively.[10] These lots are situated in Barrio Bagbagan, Muntinlupa, Rizal (now Barangay Tunasan, Muntinlupa City, Metro Manila).
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> Since 1967, respondents [Oscar], [Efren], [Cornelio], [Domingo] and [Nolasco] (herein represented by his heirs) were farmers-tenants of Victoria Homes, cultivating and planting rice and corn on the lots.

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[5] With Judge Alberto L. Lerma, presiding.

[6] *Rollo*, pp. 457-458.

[7] *Id*. at 459-460.

[8] Collectively, the herein respondents, including Oscar Camerino (Oscar), who was not a party to the compromise agreement, shall be referred to as "the farmers."

[9] *SM Systems Corp. v. Camerino, et al.*, 639 Phil. 495 (2010).

[10] The cumulative area of the three parcels of land is 292,752 square meters.

On February 9, 1983 and July 12, 1983, Victoria Homes, without notifying [the farmers], sold the subject lots to Springsun Management Systems Corporation (Springsun), the predecessor-in-interest of [SMS]. The Deeds of Sale were registered with the Registry of Deeds of Rizal. Accordingly, TCT Nos. (289237) S-6135, (289236) S-35855, and S-72244 in the name of Victoria Homes were cancelled and, in lieu thereof, TCT Nos. 120541, 120542, and 123872 were issued in the name of Springsun. Springsun subsequently mortgaged the subject lots to Banco Filipino Savings and Mortgage Bank (Banco Filipino) as security for its various loans amounting to ₱11,545,000.00. When Springsun failed to pay its loans, the mortgage was foreclosed extra-judicially. At the public auction sale, the lots were sold to Banco Filipino, being the highest bidder, but they were eventually redeemed by Springsun.

On March 7, 1995, [the farmers] filed with the [RTC], Branch 256, Muntinlupa City, a complaint against Springsun and Banco Filipino for Prohibition/*Certiorari*, Reconveyance/Redemption, Damages, Injunction with Preliminary Injunction and Temporary Restraining Order or, simply, an action for Redemption. On January 25, 2002, the RTC rendered a decision in favor of [the farmers], authorizing them to redeem the subject lots from Springsun for the total price of ₱9,790,612.00. On appeal to the CA, the appellate court affirmed the RTC decision with a modification on the award of attorney's fees.

Aggrieved, Springsun elevated the matter to this Court *via* a petition for review on *certiorari*. The case was docketed as G.R. No. 161029. On January 19, 2005, we affirmed the CA Decision. With the denial of Springsun's motion for reconsideration, the same became final and executory; accordingly, an entry of judgment was made. [The farmers] thus moved for the execution of the Decision.

[SMS] instituted an action for Annulment of Judgment with prayer for the issuance of a Temporary Restraining Order before the CA, docketed as CA-G.R. SP No. 90931. [SMS] sought the annulment of the RTC decision allowing [the farmers] to redeem the subject property. [SMS] argued that it was deprived of the opportunity to present its case on the ground of fraud, manipulations and machinations of [the farmers]. It further claimed that the Department of Agrarian Reform, not the RTC, had jurisdiction over the redemption case. The CA, however, dismissed the petition on October 20, 2005. Its motion for reconsideration was also denied for lack of merit. The

matter was elevated to this Court *via* a petition for review on *certiorari* in G.R. No. 171754, but the same was denied on June 28, 2006. After the denial of its motion for reconsideration, the Decision became final and executory; and an entry of judgment was subsequently made.

Meanwhile, on December 18, 2003, [the farmers] executed an Irrevocable Power of Attorney in favor of Mariano Nocom (Nocom), authorizing him, among other things, to comply with our January 19, 2005 Decision by paying the redemption price to Springsun and/or to the court. [The farmers], however, challenged the power of attorney in an action for revocation with the RTC. In a summary judgment, the RTC annulled the Irrevocable Power of Attorney for being contrary to law and public policy. The RTC explained that the power of attorney was a disguised conveyance of the statutory right of redemption that is prohibited under Republic Act No. 3844. The CA affirmed the RTC decision. However, this Court, in G.R. No. 182984, set aside the CA Decision and concluded that the RTC erred in rendering the summary judgment. The Court thus remanded the case to the RTC for proper proceedings and proper disposition, according to the rudiments of a regular trial on the merits and not through an abbreviated termination of the case by summary judgment.

On August 4, 2005, as [SMS] refused to accept the redemption amount of ₱9,790,612.00, plus ₱147,059.18 as commission, [the farmers] deposited the said amounts, duly evidenced by official receipts,[11] with the RTC. The RTC further granted [the farmers'] motion for execution and, consequently, TCT Nos. 120542, 120541, and 123872 in the name of [SMS] were cancelled and TCT Nos. 15895, 15896, and 15897 were issued in the names of [the farmers]. It also ordered that the "Irrevocable Power of Attorney," executed on December 18, 2003 by [the farmers] in favor of Nocom, be annotated in the memorandum of encumbrances of TCT Nos. 15895, 15896, and 15897.

On August 20, 2005, [SMS] and [the farmers] (except [Oscar]) executed a document, denominated as *Kasunduan*,[12] wherein the latter agreed to receive ₱300,000.00 each from the former, as compromise

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[11] Official Receipt Nos. (a) 1960572 for ₱9,790,612.00; (b) 1690553 for ₱73,529.59; and (c) 1689658 for ₱73,529.59, all dated August 4, 2005, *see* Summary Judgment, *rollo*, pp. 513-524, at 520.

[12] *Id*. at 869-875.

settlement. [SMS] then filed a Motion to Hold Execution in Abeyance on the Ground of Supervening Event.

On September 7, 2005, the RTC denied [SMS'] motion, thus:

> WHEREFORE, in view of the foregoing, [SMS'] Motion to Hold in Abeyance Execution on Ground of Supervening Event is denied and the Kasunduan separately entered into by [Efren, Cornelio, Domingo and the Heirs of Nolasco] are hereby disapproved.
>
> SO ORDERED.

Aggrieved by the aforesaid Order and the denial of its motion for reconsideration, [SMS] elevated the matter to the CA. On May 8, 2006, counsel for [the farmers] moved that they be excused from filing the required comment, considering that only [Oscar] was impleaded as private respondent in the amended petition; and also because [the farmers] already transferred *pendente lite* their contingent rights over the case in favor of Nocom. Nocom, in turn, filed a Motion for Leave of Court to Admit Attached Comment to the Petition.

On October 23, 2006, the appellate court rendered the assailed Decision, finding [SMS] guilty of forum shopping. The CA concluded that the present case was substantially similar to G.R. No. 171754. It further held that the compromise agreement could not novate the Court's earlier Decision in G.R. No. 161029 because only four out of five parties executed the agreement.

Undaunted, [SMS] comes before us in this petition for review on *certiorari,* raising the following issues:

1. Whether or not the *Kasunduan* effectively novated the judgment obligation.
2. Whether or not the [CA should have ruled] on the Motion to Expunge the Comment of Mariano Nocom filed by [SMS].
3. Whether or not Mariano Nocom should be allowed to participate in the instant case on the basis of the null and void Irrevocable Power of Attorney.
4. Whether or not the (sic) there is grave abuse of discretion when Judge Lerma denied the Motion to [I]nhibit filed by [SMS] despite Judge Lerma's clear showing of partiality for the other party.

5. Whether or not there is forum-shopping.[13] (Citations omitted)

In the same Resolution dated July 26, 2010, contrary to the CA's conclusion, the Court had resolved that SMS is not guilty of forum shopping for reasons stated below:

It is true that after the finality of this Court's Decision in G.R. No. 161029 dated January 19, 2005, [SMS] instituted and filed various petitions and motions which essentially prevented the execution of the aforesaid Decision. Yet, we do not agree with the CA that the instant case is dismissible because it earlier filed an action for annulment of judgment that involved substantially the same set of facts, issues, and reliefs sought. While [SMS'] goal in filing the instant case is the same as that in G.R. No. 171754 (which stemmed from the petition for annulment of judgment), that is to prevent the execution of the January 19, 2005 Decision, still, there is no forum shopping.

In the action for annulment of judgment, [SMS] sought the nullification of the January 19, 2005 Decision on the ground that it was deprived of its opportunity to present its case and that the RTC had no jurisdiction to decide the case. While in the instant case, [SMS] prays that the execution of the January 19, 2005 Decision be held in abeyance in view of the compromise agreement entered into by [SMS] and four [of the farmers, namely, Efren, Cornelio, Domingo and the Heirs of Nolasco]. In short, the issue threshed out in the annulment case was the validity of the 2005 Decision, while in this case, the issue is focused on the effect of the compromise agreement entered into after the finality of the Decision sought to be executed. Clearly, therefore, there is no identity of issues in the two cases.[14]

In the light of the foregoing, the Court declared that a further review of the herein assailed decision and resolution is in order. However, the Court were unable to fully dispose of all the issues raised considering the pendency then of Civil Case No. 05-172, the petition filed by the farmers before the RTC of Muntinlupa City, Branch 203, to challenge the Irrevocable Power of Attorney (IPA)[15] issued to Mariano Nocom (Nocom). This circumstance acquires greater significance as Nocom, in his

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[13] *SM Systems Corp. v. Camerino, et al.*, *supra* note 9, at 497-502.

[14] *Id*. at 503.

[15] *Rollo*, pp. 660-662.

own behalf, to the exclusion of the farmers, and on the basis of the IPA, has filed before this Court a Comment[16] and a Memorandum[17] to the instant petition. Hence, in the same Resolution dated July 26, 2010, the Court held in abeyance the proceedings herein until Civil Case No. 05-172 shall have been terminated.[18]

Civil Case No. 05-172 was thereafter re-raffled to RTC of Muntinlupa City, Branch 256, following the voluntary inhibition from further hearing the case of the then Presiding Judge of Branch 203, Myra B. Quiambao.[19]

On September 20, 2011, the then Acting Presiding Judge of Branch 256, Leandro C. Catalo, issued an Order[20] dismissing the case on account of the farmers' withdrawal of their petition against Nocom. Necessarily, SMS' complaint-in-intervention was also dismissed and its motion for reconsideration was denied through the Order[21] issued by the RTC on April 3, 2012.

With Civil Case No. 05-172 now terminated, the Court can proceed to dispose of the four unresolved issues for consideration.

The Parties' Arguments

In support of the petition, SMS claims that the IPA issued in 2003 by the farmers in Nocom's favor effected a transfer of lands acquired under the agrarian reform program breaching both laws and public policy. Thus, notwithstanding the execution of the IPA, Nocom has no interest over the three parcels of land. Consequently, Nocom cannot step into the shoes of the farmers as a party to the case, hence, the pleadings he filed should be expunged from the records.[22]

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16 *Id*. at 594-644.
17 *Id*. at 1036-1078.
18 *SM Systems Corp. v. Camerino, et al.*, *supra* note 9, at 506.
19 *Rollo*, pp. 1148-1149.
20 *Id*. at 1158-1159.
21 *Id*. at 1160-1161.
22 *Id*. at 43-45.

SMS likewise alleges that the *Kasunduan* it executed with each of the four farmers complied with the requisites and principles of contracts, therefore, valid despite having been entered into after the finality of the judgment in the redemption case. Further, the amount of ₱300,000.00 paid to each of the four farmers was not unconscionable for being way above the sum of ₱25,000.00 originally demanded from SMS. Besides, there was an eventual admission of the lack of legitimate tenancy or agricultural leasehold relationship between the parties.[23]

The farmers did not file a comment to the petition. In their stead, Nocom, representing himself as transferee *pendente lite* of the farmers' claimed rights of redemption, argues that the petition is fatally defective for failure to implead him as an indispensable party. As early as 2003, he had paid the farmers a total sum of ₱2,500,000.00. Thus, when SMS executed the *Kasunduan* with four of the farmers in 2005, the latter had nothing more to waive, and the judgment in the redemption case had also become final.[24]

Ruling of the Court

There is merit in the instant petition.

It bears noting that on October 12, 2010, albeit in a case unrelated to the instant petition, the Court had found Judge Lerma guilty of gross misconduct and he was meted a penalty of dismissal from service.[25] Hence, one of the issues for the Court's consideration, to wit, the alleged partiality of Judge Lerma and his refusal to inhibit himself from further issuing orders relative to Civil Case No. 95-020 is rendered moot.

Nocom cannot rightfully substitute the farmers as a party to the case.

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[23] *Id*. at 36-40.

[24] Please *see* Comment, *id*. at 594-644, at 623-625, 634-642.

[25] Please see *Atty. Lourdes A. Ona v. Judge Alberto L. Lerma*, 647 Phil. 216, 250 (2010).

While Civil Case No. 05-172 had already been dismissed due to the withdrawal by the farmers themselves of their petition to revoke the IPA before the RTC, the Court still finds Nocom to be without the legal personality to substitute the former as a party in the redemption case.

It is settled that the provisions of existing laws are read into contracts and deemed a part thereof.[26]

Section 62 of Republic Act (R.A.) No. 3844[27] clearly provides:

Sec. 62. *Limitation on Land Rights*.—Except in case of hereditary succession by one heir, landholdings acquired under this Code may not be resold, mortgaged, encumbered, or transferred until after the lapse of ten years from the date of full payment and acquisition and after such ten-year period, any transfer, sale or disposition may be made only in favor of persons qualified to acquire economic family-size farm units in accordance with the provisions of this Code x x x.

Tayag v. Lacson[28] unequivocally emphasizes the prohibition on the transfer of the right of redemption acquired pursuant to agrarian laws, *viz.*:

Under Section 22 of [R.A. No. 6657],[29] beneficiaries under

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[26] Please see *Hacienda Luisita, Inc. v. Presidential Agrarian Reform Council, et al.*, 668 Phil. 365, 454 (2011), citing *Serrano v. Gallant Maritime Services, Inc., et al.*, 601 Phil. 245, 280 (2009).

[27] AN ACT TO ORDAIN THE AGRICULTURAL LAND REFORM CODE AND TO INSTITUTE LAND REFORMS IN THE PHILIPPINES, INCLUDING THE ABOLITION OF TENANCY AND THE CHANNELING OF CAPITAL INTO INDUSTRY, PROVIDE FOR THE NECESSARY IMPLEMENTING AGENCIES, APPROPRIATE FUNDS THEREFOR AND FOR OTHER PURPOSES. Effective August 8, 1963.

[28] 470 Phil. 64 (2004).

[29] AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES. Approved on June 10, 1988.

P.D. No. 27[30] who have culpably sold, disposed of, or abandoned their land, are disqualified from becoming beneficiaries.

x x x x x x x x x

Under Section 12 of the law, if the property was sold to a third person without the knowledge of the tenants thereon, the latter shall have the right to redeem the same at a reasonable price and consideration. By assigning their rights and interests on the landholding under the deeds of assignment in favor of the petitioner, the defendants-tenants thereby waived, in favor of the petitioner, who is not a beneficiary under Section 22 of [R.A.] No. 6657, their rights of preemption or redemption under [R.A.] No. 3844. The defendants-tenants would then have to vacate the property in favor of the petitioner upon full payment of the purchase price. Instead of acquiring ownership of the portions of the landholding respectively [tilled] by them, the defendants-tenants would again become landless for a measly sum of ₱50.00 per square meter. The petitioner's scheme is subversive, not only of public policy, but also of the letter and spirit of the agrarian laws. That the scheme of the petitioner had yet to take effect in the future or ten years hence is not a justification. The respondents may well argue that the agrarian laws had been violated by the defendants-tenants and the petitioner by the mere execution of the deeds of assignment. In fact, the petitioner has implemented the deeds by paying the defendants-tenants amounts of money and even sought their immediate implementation by setting a meeting with the defendants-tenants. x x x.[31]

In the case before this Court, the IPA issued by the farmers conferred upon Nocom the rights to "*sell, assign, transfer, dispose of, mortgage and alienate*" the subject three parcels of land and "*procure the necessary transfer certificate of titles in his name as the absolute owner of said properties*."[32] The said IPA is nothing less but a conveyance of the rights of the farmers to

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[30] DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR. Approved on October 21, 1972.

[31] *Tayag v. Lacson*, *supra* note 28, at 98-99.

[32] *Rollo*, pp. 660-661.

Nocom, hence, invalid for being an affront against agrarian laws. Section 62 of R.A. No. 3844 explicitly states that a transfer of the rights over agricultural leasehold acquired by a farmer can only be done after the lapse of 10 years reckoned from full payment or acquisition thereof, and only in favor of a person, who is qualified to be a beneficiary under agrarian laws. Both requisites are absent in the instant case. When the IPA was executed on December 18, 2003, ownership over the landholdings had not even been conferred upon the farmers and there is nothing on the records showing that Nocom is qualified to be a beneficiary under agrarian laws. Perforce, Nocom cannot step into the shoes of the farmers as a party to the case.

Be that as it may, in the interest of justice and to be able to write *finis* to the instant case, the Court will not expunge Nocom's pleadings but consider them as having been filed by an intervenor.

Section 1 of Rule 19 of the 1997 Rules of Civil Procedure states:

> Section 1. *Who may intervene.* – A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

Although Nocom cannot properly substitute as a party to the case, it is not disputed that he supplied the amount of ₱9,790,612.00, plus ₱147,059.18 commission deposited by the farmers to the RTC to redeem the three parcels of land from SMS. That is where his interest lies. Nocom is entitled to be reimbursed for those amounts, and this is the only reason why the Court is allowing his intervention.

In sum, the Court finds the conveyance of the farmers' rights made in Nocom's favor to be unlawful. Notwithstanding the dismissal of the petition to nullify the IPA upon the instance

of the farmers themselves, Nocom cannot rightfully substitute them as a party to this case.

The compromise agreements executed by and between SMS and four of the farmers are valid, thus, a novation of the judgment in the redemption case.

In invalidating the compromise agreements, the RTC explained that at the time of their execution, the judgment in the redemption case was already final, thus, there were no more proceedings to suspend. Further, the amount of ₱300,000.00 paid by SMS to each of the four farmers was unconscionable.[33]

On the other hand, the CA, in ruling that the *Kasunduan* executed by SMS with each of the four farmers did not novate the judgment obligation, ratiocinated that:

> [T]he right of redemption in favor of [the farmers] is one which must be exercised in full, if it is to be exercised at all. [The farmers] must be able to subrogate themselves in the place of and to the exclusion of [SMS]. Since such right is one which cannot be exercised partially, it follows that [SMS'] obligation to allow them to exercise the said right cannot also be performed severally. Because the right granted is incapable of dissection into component parts, the obligation imposed by the said judgment upon [SMS] is also indivisible. In obligations to do, as in that prescribed in the final judgment in Civil Case No. 95-020, indivisibility is also presumed.[34]

"A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced."[35]

Compromise is a form of amicable settlement that is not only allowed, but also encouraged in civil cases. Contracting parties

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[33] *Id*. at 458.

[34] *Id*. at 74.

[35] NEW CIVIL CODE OF THE PHILIPPINES, Article 2028.

may establish such stipulations, clauses, terms, and conditions as they deem convenient, provided that these are not contrary to law, morals, good customs, public order, or public policy.[36]

Rights may be waived through a compromise agreement, notwithstanding a final judgment that has already settled the rights of the contracting parties. To be binding, the compromise must be shown to have been voluntarily, freely and intelligently executed by the parties, who had full knowledge of the judgment.[37]

The Court, in its Resolution dated July 26, 2010, stated that:

> Once a case is terminated by final judgment, the rights of the parties are settled; hence, a compromise agreement is no longer necessary. Though it may not be prudent to do so, we have seen in a number of cases that parties still considered and had, in fact, executed such agreement. To be sure, **the parties may execute a compromise agreement even after the finality of the decision.** A reciprocal concession inherent in a compromise agreement assures benefits for the contracting parties. For the defeated litigant, obvious is the advantage of a compromise after final judgment as the liability decreed by the judgment may be reduced. As to the prevailing party, it assures receipt of payment because litigants are sometimes deprived of their winnings because of unscrupulous mechanisms meant to delay or evade the execution of a final judgment.[38] (Citations omitted and emphasis ours)

There is no justification to disallow a compromise agreement, solely because it was entered into after final judgment. The validity of the agreement is determined by compliance with the requisites and principles of contracts, not by when it was entered into. As provided by the law on contracts, a valid compromise must have the following elements: (1) the consent of the parties to the compromise; (2) an object certain that is

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[36] *Heirs of Alfredo Zabala v. Hon. Court of Appeals, et al.,* 634 Phil. 464, 467-468 (2010).

[37] *Magbanua v. Uy*, 497 Phil. 511, 515 (2005).

[38] *SM Systems Corp. v. Camerino, et al.*, *supra* note 9, at 504.

the subject matter of the compromise; and (3) the cause of the obligation that is established.[39]

In the course of the proceedings of the instant case, the farmers themselves raised no challenge relative to the existence of the elements of a valid contract. The execution of the compromise agreements between SMS and four of the farmers is an undisputed fact. There are likewise no claims of vitiated consent and no proof that the agreements were "*rescissible, voidable, unenforceable, or void*."[40] Moreover, the Court does not find the amount of ₱300,000.00 paid to each of the four farmers as unconscionable especially in the light of Efren's subsequent declaration that they tilled the land on their own initiative, without procuring anybody's permission, and *sans* a harvest sharing agreement.[41]

Anent the CA's ruling on the indivisibility of the exercise of the right of redemption, the Court finds the same to be without legal mooring.

Section 12 of R.A. No. 3844 originally provided:

> Sec. 12. *Lessee's Right of Redemption.* – In case the landholding is sold to a third person without the knowledge of the agricultural lessee, the latter shall have the right to redeem the same at a reasonable price and consideration. **Provided, That the entire landholding sold must be redeemed**: *Provided, further*, That where there are two or more agricultural lessees, each shall be entitled to said right of redemption only to the extent of the area actually cultivated by him. The right of redemption under this Section may be exercised within two (2) years from the registration of the sale and shall have priority over any other right of legal redemption. (Emphasis ours and italics in the original)

However, in view of its amendment by Section 12 of R.A. No. 6389,[42] it now reads as follows:

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[39] *Magbanua v. Uy*, *supra* note 37, at 522.

[40] *Id*. at 523.

[41] Please *see* Efren's *Sinumpaang Salaysay*, *rollo*, pp. 439-440, at 439.

[42] AN ACT AMENDING REPUBLIC ACT NUMBERED THIRTY-EIGHT HUNDRED AND FORTY-FOUR, AS AMENDED, OTHERWISE KNOWN AS THE AGRICULTURAL LAND REFORM CODE, AND FOR OTHER PURPOSES. Effective September 10, 1971.

Sec. 12. *Lessee's Right of Redemption.* – In case the landholding is sold to a third person without the knowledge of the agricultural lessee, the latter shall have the right to redeem the same at a reasonable price and consideration: **Provided, that where there are two or more agricultural lessees, each shall be entitled to said right of redemption only to the extent of the area actually cultivated by him.** The right of redemption under this Section may be exercised within one hundred and eighty days from notice in writing which shall be served by the vendee on all lessees affected and the Department of Agrarian Reform upon the registration of the sale, and shall have priority over any other right of redemption. The redemption price shall be the reasonable price of the land at the time of the sale.

Upon the filing of the corresponding petition or request (to redeem) with the department or corresponding case in court by the agricultural lessee or lessees, the said period of one hundred and eighty days shall cease to run.

Any petition or request for redemption shall be resolved within sixty days from filing thereof; otherwise the said period shall start to run again.

x x x x x x x x x (Emphasis and underlining ours)

Considering the foregoing, it is logical to conclude that the right of redemption can be exercised separately by each of the farmers in proportion to the area of the agricultural land they cultivated. Thus, the non-participation of Oscar will not affect the validity of the compromise agreements executed by SMS with four of the farmers.

Lastly, it is indispensable to inquire if the law or public policy disallows the four farmers from executing waivers of their redemption rights. In *Planters Development Bank v. Garcia*,[43] the Court discussed as follows the rights of the landowners *vis-á-vis* those of tenants or agricultural lessees in cases of sale of the landholdings:

As an owner, Carolina has the right to dispose of the property without other limitations than those established by law. This attribute

[43] 513 Phil. 294 (2005).

of ownership is impliedly recognized in Sections 10, 11 and 12 of [R.A.] No. 3844, where the law allows the agricultural lessor to sell the landholding, with or without the knowledge of the agricultural lessee and at the same time recognizes the right of preemption and redemption of the agricultural lessee. *Thus, the existence of tenancy rights of agricultural* lessee cannot affect nor derogate from the right of the agricultural lessor as owner to dispose of the property. The only right of the agricultural lessee or his successor in interest is the right of preemption and/or redemption.[44] (Italics in the original)

While the right of redemption is available to the farmers, it need not be exercised and can be waived. There is no law disallowing such waiver and it is not within the contemplation of transfers prohibited by Section 62 of R.A. No. 3844.

The Court, thus, finds no compelling grounds to invalidate the compromise agreements.

In *Heirs of Servando Franco v. Spouses Gonzales*,[45] the Court discussed novation in this wise:

A novation arises when there is a substitution of an obligation by a subsequent one that extinguishes the first, either by changing the object or the principal conditions, or by substituting the person of the debtor, or by subrogating a third person in the rights of the creditor. For a valid novation to take place, there must be, therefore: (*a*) a previous valid obligation; (*b*) an agreement of the parties to make a new contract; (*c*) an extinguishment of the old contract; and (*d*) a valid new contract. In short, the new obligation extinguishes the prior agreement only when the substitution is unequivocally declared, *or* the old and the new obligations are incompatible on every point. A compromise of a final judgment operates as a novation of the judgment obligation upon compliance with either of these two conditions.[46] (Citations omitted)

In the case at bar, SMS' obligation to allow redemption of the three parcels of land was superseded by the terms of the

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[44] *Id*. at 308-309, citing *Milestone Realty & Co., Inc. v. CA*, 431 Phil. 119, 132-133 (2002).

[45] 689 Phil. 378 (2012).

[46] *Id*. at 390.

compromise agreements executed with the four farmers. SMS' new obligation consisted of the payment of ₱300,000.00 each to the four farmers, who, in turn, waived their redemption rights. Novation, thus, arose as the old obligation became incompatible with the new.

The Court also notes that Oscar, the farmer who did not execute a compromise agreement with SMS, filed before the RTC a Manifestation and Motion,[47] dated September 15, 2006, indicating that "*he has no plans, as he is in no financial position, to exercise the right of redemption*"[48] granted to him.

Considering that the judgment obligation had been novated due to the execution of valid compromise agreements, and in the light of Oscar's manifestation of his disinterest in exercising his right of redemption, the writ of execution issued by the RTC on August 22, 2005 in Civil Case No. 95-020, should thus be quashed.

IN VIEW OF THE FOREGOING, the Decision and Resolution of the Court of Appeals, dated October 23, 2006 and June 29, 2007, respectively, in CA-G.R. SP No. 92994, are **SET ASIDE**. The writ of execution issued on August 22, 2005 by the Regional Trial Court of Muntinlupa City, Branch 256, in Civil Case No. 95-020 is hereby **QUASHED**. Transfer Certificate of Title Nos. 15895, 15896, and 15897 in the names of Oscar Camerino, Efren Camerino, Cornelio Mantile, Domingo Enriquez and Nolasco del Rosario are hereby **CANCELLED**, and TCT Nos. 120541, 120542, and 123872 in the name of Springsun Management Systems Corporation, the predecessor of the petitioner herein, SM Systems Corporation, are **REINSTATED**. The trial court is further directed to **RETURN** to the intervenor, Mariano Nocom, the amounts of ₱9,790,612.00 and ₱147,059.18 consigned by him as redemption price and commission, respectively.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Jardeleza,* and *Tijam, JJ.,* concur.

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[47] *Rollo*, pp. 924-927.

[48] *Id*. at 926.

THIRD DIVISION

[G.R. No. 188467. March 29, 2017]

RENATO MA. R. PERALTA, *petitioner, vs.* **JOSE ROY RAVAL,** *respondent*.

[G.R. No. 188764. March 29, 2017]

JOSE ROY B. RAVAL, *petitioner, vs.* **RENATO MA. R. PERALTA,** *respondent*.

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); CERTIFICATE OF TITLE; SHALL NOT BE SUBJECT TO COLLATERAL ATTACK.— Section 48 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, provides that "[a] certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law." Pursuant to this provision, the courts have consistently ruled against collateral attacks on land titles.

2. ID.; CIVIL CODE; OBLIGATIONS AND CONTRACTS; LEASE; RESCISSION OF LEASE AGREEMENTS; AN ACTION FOR RESCISSION OF A LEASE CONTRACT FOR VIOLATION OF THE LEASE AGREEMENT PRESCRIBES IN TEN YEARS, THE CAUSE OF ACTION BEING ONE THAT IS BASED ON A WRITTEN CONTRACT.— [S]pecifically on the matter of rescission of lease agreements, Article 1659 of the NCC applies as a rule. x x x Article 1654 referred to in Article 1659 pertains to the obligations of a lessor in a lease agreement. Article 1657, on the other hand, enumerates the obligations of a lessee x x x. Given the rules that exclusively apply to leases, the other provisions of the NCC that deal with the issue of rescission may not be applicable to contracts of lease. x x x Article 1389 applies to rescissions in Articles 1380 and 1381, which are distinct from rescissions of lease under Article 1659. x x x

The nature of an action filed under Article 1389, as well as the prescriptive period of four years that is provided under the provision, do not apply to all rescissible contracts but are limited to specific cases x x x. The x x x prescriptive period of 10 years, counted from the time that the right of action accrues, applies in the case at bar. Raval's cause of action did not refer to Article 1389, yet one that was based on a written contract. Thus, contrary to Peralta's insistent claim, the action for rescission had not yet prescribed at the time of its filing in 1998. Raval's cause of action accrued not on the date of the lease agreement's execution in 1974, but from the time that there was a violation and default by Peralta in his obligations under the lease agreement. x x x Raval's complaint specified the violations that were allegedly committed by Peralta as a lessee. x x x These violations happened either immediately prior to Raval's repeated extrajudicial demands that began in August 1995; or after Peralta's refusal to heed to the demands. There was no indication that the violations dated back from the first few years of the lease agreement's effectivity in the 1970s. Clearly, the filing of the action for rescission in 1998 was within the 10-year prescriptive period that applies to the suit.

3. ID.; ID.; ID.; ID.; REMEDIES OF AN AGGRIEVED PARTY IN A LEASE CONTRACT.— Under Article 1659 of the NCC, an aggrieved party in a lease contract may ask for any of the following remedies: (1) the rescission of the contract; (2) rescission and indemnification for damages; and (3) only indemnification for damages, allowing the contract to remain in force.

4. ID.; ID.; ID.; MORAL DAMAGES; RECOVERABLE ONLY IF THE PARTY FROM WHOM IT IS CLAIMED ACTED FRAUDULENTLY OR IN BAD FAITH OR IN WANTON DISREGARD OF HIS CONTRACTUAL OBLIGATIONS.— "Moral damages are not recoverable simply because a contract has been breached. They are recoverable only if the party from whom it is claimed acted fraudulently or in bad faith or in wanton disregard of his contractual obligations. The breach must be wanton, reckless, malicious or in bad faith, and oppressive or abusive." x x x Peralta did not appear to have acted in this manner.

5. ID.; ID.; ID.; ID.; WARRANTED FOR ACTS THAT ARE TAINTED WITH BAD FAITH; BAD FAITH, DEFINED.— [I]t is clear that the action for rescission was not filed purposely to humiliate or harass Peralta, but to seek redress for what Raval believed was a violation of his rights as the new owner of the subject lots, and lessor to Peralta. This barred any justification for an award of moral damages, which is ordinarily warranted for acts that are tainted with bad faith. Bad faith imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud. It is a question of intention, which can be inferred from one's conduct and/or contemporaneous statements.

6. ID.; ID.; ID.; EXEMPLARY DAMAGES AND ATTORNEY'S FEES; WHEN AWARDED.— As regards exemplary damages, it is settled that to warrant its award, the wrongful act must be accompanied by bad faith, and the guilty party acted in a wanton, fraudulent, reckless or malevolent manner. Attorney's fees, on the other hand, is proper only if a party was forced to litigate and incur expenses to protect his right and interest by reason of an unjustified act or omission of the party for whom it is sought. The award of attorney's fees is more of an exception than the general rule, since it is not sound policy to place a penalty on the right to litigate.

APPEARANCES OF COUNSEL

Pacifico B. Tacub for Renato Ma. R. Peralta.
Lucas C. Carpio for J.R. Raval.
Jose Roy B. Raval co-counsel for himself.

D E C I S I O N

REYES, *J.*:

Before the Court are consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court, docketed as G.R. No. 188764 and G.R. No. 188467 and filed by Jose

Roy B. Raval (Raval) and Renato Ma. R. Peralta (Peralta), respectively. Subject of both petitions is the Decision[1] dated October 8, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 85685, wherein the CA affirmed with modification the Decision[2] dated May 17, 2005 of the Regional Trial Court (RTC) of Laoag City, Branch 14, in the action for rescission of lease agreement, docketed as Civil Case No. 11424-14, that was filed by Raval against Peralta.

The Antecedents

The controversy involves a lease agreement over two parcels of residential land, particularly Lot Nos. 9128-A and 9128-B, situated in San Jose, Laoag, Ilocos Norte and previously covered by Transfer Certificate of Title (TCT) Nos. T-2406[3] and T-3538[4] issued by the Register of Deeds for Ilocos Norte under the names of spouses Flaviano Arzaga, Sr. and Magdalena Agcaoili-Arzaga (Spouses Arzaga).[5] Each lot measures 660 square meters, more or less.[6]

On February 19, 1974, the Spouses Arzaga, as lessors, entered into a Contract of Lease[7] with Peralta, as lessee, over the subject lots and the improvements thereon, more particularly described in their contract as follows:

B. x x x the whole of Lot No. 9128-A, with an area of 660 square meters; the northern portion of Lot No. 9128-B with an inclusive approximate area of 317 square meters; the first floor of the residential

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[1] Penned by Associate Justice Noel G. Tijam (now a Member of this Court), with Associate Justices Martin S. Villarama, Jr. (retired Justice of the Supreme Court) and Arturo G. Tayag concurring; *rollo* (G.R. No. 188467), pp. 69-84.

[2] Rendered by Judge Ramon A. Pacis; *id*. at 94-131.

[3] Records, pp. 640-641.

[4] *Id*. at 638-639.

[5] *Rollo* (G.R. No. 188467), p. 70.

[6] *Id*. at 134.

[7] *Id*. at 134-136.

house found thereon with an approximate area of 160 square meters, consisting of a porch, a receiving room, three (3) bedrooms, a toilet and small room used as a bodega, the land area occupied by the garage and the driveway of 157 square meters, more or less, specifically situated at the southern portion of Lot No. 9128-B, including the room above the garage; a kitchen with an area of 18 square meters; and the water tank built thereon together with its accessories x x x.[8]

Spouses Arzaga and Peralta agreed on a lease term of 40 years, for monthly rentals at the following rates: (a) ₱500.00 beginning May 1974; (b) ₱600.00 after the 10th year; (c) ₱700.00 after the 20th year; and (d) ₱800.00 after the 30th year and until the termination of the lease. Under the lease contract, Peralta was also to construct on the leased land a building that should become property of the Spouses Arzaga upon lease termination, to pay realty taxes for both lots, and to develop a water system for the use of both parties to the lease contract.[9]

Sometime in May 1988, Flaviano Arzaga, Jr. (Flaviano Jr.), being an adopted son and heir of the Spouses Arzaga, filed with the RTC of Laoag City a complaint for annulment of lease contract, docketed as Civil Case No. 9121-16, against Peralta, who allegedly breached in his obligations under the contract of lease. The complaint was eventually dismissed by the RTC on December 10, 1990.[10] The RTC decision was later affirmed by the CA in CA-G.R. CV No. 30396, while the CA ruling was no longer appealed by Flaviano Jr. to the Supreme Court.[11]

Raval came into the picture after Flaviano Jr. assigned to him *via* a Deed of Assignment[12] dated July 28, 1995 all his interests, rights and participation in the subject properties for a consideration of ₱500,000.00. Peralta refused to recognize the validity of the assignment to Raval, prompting

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[8] *Id*. at 134.

[9] *Id*. at 135.

[10] *Id*. at 70-71.

[11] *Id*. at 121.

[12] *Id*. at 138.

him to still deposit his rental payments for the account of Flaviano Jr.,[13] more specifically to bank accounts that were opened by Peralta's wife, Gloria Peralta, under the name "Gloria F. Peralta [in-trust-for] (ITF): Flaviano Arzaga, Jr."[14]

Beginning August 1995, Raval demanded from Peralta compliance with the lease contract's terms and conditions.[15] On October 2, 1995, Raval's father and counsel, Atty. Castor Raval (Castor), wrote a letter to Peralta demanding the removal of the structures that the latter built on a portion of Lot No. 9128-B, as he claimed that it was not covered by the lease agreement. This demand was reiterated by Castor in a letter dated November 4, 1995, by which he also sought access to the residential house's second floor and an updated accounting of rentals already paid.[16] Peralta's refusal to heed to the demands of Castor prompted the latter to send several other demand letters and, eventually, to refer the matter to barangay for conciliation.[17]

When the parties still failed to settle the issue, Castor sent another letter to Peralta on June 14, 1996, informing the latter that a lessee was to occupy the second storey of the house and demanding that the area be cleared for that purpose. On June 22, 1996, Castor again pointed out to Peralta the structures on Lot No. 9128-B that were allegedly not part of the lease agreement. He claimed that Peralta had become a builder in bad faith, such that the improvements made were to be already considered as properties of Raval.[18]

After several more demands and another barangay conciliation, Raval eventually filed in 1998 the subject complaint[19] for

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[13] *Id*. at 77.

[14] *Id*. at 71, 119.

[15] *Id*. at 94.

[16] *Id*. at 71-72.

[17] *Id*. at 72, 125-127.

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

[19] *Id*. at 132-133.

rescission of lease with the RTC of Laoag City against Peralta. He alleged that Peralta failed to comply with the terms of the lease contract and his demands as a lessor, particularly on the following matters:

> a. Refusal to render an accounting of the unpaid monthly rental[s] prior to 28 July 1995 and pay monthly rental[s] thereafter up to the present;
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> b. Refusal to vacate the 2nd storey of the old house;
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> c. Refusal to remove the improvements illegally constructed on areas not covered by [the Contract of Lease];
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> d. Refusal to operate and provide a water system; [and]
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> e. Refusal to refund the taxes paid by [Flaviano Jr.] as per decision in Civil Case No. 9121-16[.][20]

Raval's complaint ended with a prayer for the rescission of the lease agreement, an order upon Peralta to vacate the subject properties, payment of back rentals, and award of moral, exemplary and nominal damages, plus attorney's fees and costs of suit.[21]

Peralta opposed the complaint and sought its dismissal, as he insisted that Raval was not his lessor, and thus was not a real party-in-interest to the case. The supposed assignment between Flaviano Jr. and Raval was allegedly void considering that he was not consulted thereon and his prior approval thereto was not obtained. Moreover, notwithstanding an assignment, Raval did not have the right, power and authority to seek the rescission of the contract of lease that was executed 24 years prior to the filing of the complaint. Peralta had also faithfully complied with his obligations under the lease.[22]

By way of counterclaim, Peralta asked for ₱500,000.00 as moral damages, ₱50,000.00 as exemplary damages, and

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[20] *Id*. at 132.

[21] *Id*. at 133.

[22] *Id*. at 139-140.

₱30,000.00 as attorney's fees. Raval's complaint was allegedly filed to harass and put him in public ridicule and contempt.[23] Its filing also caused him to "suffer social humiliation, besmirched reputation, mental anguish, wounded feelings, sleepless nights,"[24] especially as he was a member of the *Sangguniang Panlalawigan*, the Provincial Administrator of Ilocos Norte, and had signified his intention to seek the vice-gubernatorial post in the province.[25]

Ruling of the RTC

On May 17, 2005, the RTC of Laoag City, Branch 14, dismissed both Raval's complaint and Peralta's counterclaim. The dispositive portion of the RTC's decision[26] reads:

> WHEREFORE, in view of all the foregoing, the above-entitled case is hereby ordered dismissed. [Peralta's] counter-claim is likewise dismissed.
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> SO ORDERED.[27]

Action for Rescission

In rejecting the claim against the validity of the deed of assignment, the RTC explained that an admission of Peralta's arguments thereon would result in a collateral attack on the TCTs that were issued to Raval by reason of the assignment. Such collateral attack is precluded under settled jurisprudence.[28]

In any case, the RTC ruled that rescission should be denied because Peralta had been depositing his monthly rentals in the bank accounts that were opened "in trust for" Raval and specifically for the purpose of effecting the payments. Peralta, then, was not remiss in the payment of rentals. The money remained with the bank; it was incumbent upon Flaviano Jr.

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[23] *Id*. at 140.

[24] *Id.*

[25] *Id*. at 140-141.

[26] *Id*. at 94-131.

[27] *Id*. at 131.

[28] *Id*. at 117.

and Raval to come up with an arrangement as to how the money would be withdrawn.[29]

Neither was there any other substantial breach nor a "blatant refusal" on Peralta's part to comply with his obligations as lessee.[30] The lapses committed by Peralta, such as the alleged unauthorized construction of structures, non-installation of water system on the second floor and failure to render an accounting, were merely minor or trivial.[31]

Counterclaim

Peralta's counterclaim for damages was also dismissed. It was not proved that the institution of the rescission case was prompted by malice, fraud or bad faith. Prior to the filing of his complaint, Raval repeatedly tried to reach out to Peralta, through his counsel, for negotiations or an amicable settlement of the issue.[32] The filing of the court action was only necessary for the protection of his rights and interests over the disputed properties. It could not be classified as a wrongful act.[33]

Dissatisfied by the trial court's ruling, both Raval and Peralta moved to reconsider, but their respective motions were denied by the trial court.[34] This prompted both parties to file their separate appeals with the CA. Raval insisted on a rescission of the lease agreement and an award of rentals from the date of the deed of assignment in 1995, until the time that the case for rescission was filed in 1998. For his part, Peralta maintained that he was entitled to damages, attorney's fees and litigation costs.[35]

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[29] *Id*. at 122-123.

[30] *Id*. at 124, 129.

[31] *Id*. at 130.

[32] *Id*. at 125-128.

[33] *Id*. at 128.

[34] *Id*. at 75.

[35] *Id*. at 76-77.

Ruling of the CA

Raval's appeal was granted in part. Although the appellate court still denied Raval's plea for rescission, it granted in his favor an award of unpaid rental payments.

The CA sustained the validity of the deed of assignment between Flaviano Jr. and Raval, after finding that Peralta failed to establish his claims against the notarized deed's validity and due execution. As an assignee of the interests over the subject properties, Raval was a proper party to institute the action for rescission. Considering, however, that Raval did not appear to be capable of returning to Peralta the rental payments that were paid prior to the assignment of rights, the CA declared a rescission unfeasible. Rescission creates the obligation to return the object of the contract; thus, it can be carried out only when the one who demands rescission can return whatever he may be obliged to restore.[36] It would also be unjust to Peralta if rescission were allowed, considering that he had complied with his obligations as a lessee for more than 20 years.[37]

Raval, nonetheless, had the right to go after Peralta for unpaid monthly rentals. Given the assignment of rights, Peralta's insistence to pay to Flaviano Jr. was erroneous.[38] Raval was also declared entitled to moral damages, considering that Peralta's obstinate and unjustified refusal to pay Raval the rental payments amounted to bad faith and wanton attitude.[39]

As regards Peralta's counterclaim, the RTC's dismissal thereof was sustained. For the CA, it was Peralta's unjustified refusal to comply with the terms of the lease agreement that led to the court action. He should then bear any losses or damages sustained by reason of the filing of the action.[40] Thus, the decretal portion of the CA Decision dated October 8, 2008 reads:

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[36] *Id.* at 81.

[37] *Id.* at 82.

[38] *Id.* at 80-81.

[39] *Id.* at 83.

[40] *Id.*

WHEREFORE, [Raval's] Appeal is ***GRANTED IN PART*** and [Peralta's] Appeal is ***DISMISSED***. The Decision, dated May 17, 2005, of the [RTC] of Laoag City, Branch 14, in Civil Case No. 11424-14, is ***AFFIRMED with MODIFICATIONS*** in that [Peralta] is ordered to pay [Raval] the rental payments from August 1998[41] up to present, plus 12% interest, and Moral Damages of ₱10,000.00.

SO ORDERED.[42]

Raval and Peralta filed their respective motions for partial reconsideration, but these were denied by the CA *via* a Resolution[43] dated June 30, 2009. Hence, the present petitions for review on *certiorari*.

The Present Petitions

In G.R. No. 188467,[44] Peralta assails the CA's ruling to dismiss his counterclaim for damages and attorney's fees. He insists that the deed of assignment, upon which Raval anchored his right to seek the lease agreement's rescission, is null and void, such that Raval could not have obtained any rights and obligations therefrom. Peralta likewise contends that Raval violated the rule against forum shopping when he filed the action for rescission even after Flaviano Jr. has filed the action for cancellation of lease, albeit the latter was dismissed by the RTC. Finally, the action for rescission has prescribed when Raval filed it in 1998, as he cites Article 1389 of the New Civil Code (NCC) which provides that an action for rescission must be filed within four years.

In G.R. No. 188764,[45] Raval insists on a rescission, resolution or cancellation of the lease agreement. He contends that Peralta

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[41] August 1995 in the body of the CA decision, which could refer to Raval's first demand upon Peralta to respect the terms of the lease contract.

[42] *Rollo* (G.R. No. 188467), pp. 83-84.

[43] *Id*. at 86-89.

[44] *Id*. at 9-65.

[45] *Rollo* (G.R. No. 188764), pp. 14-28.

has failed to comply with his obligations under the contract, which as a consequence, has given Raval the statutory right to rescind the lease agreement under Article 1191 of the NCC.

Ruling of the Court

Rights and Interests of Raval

It is crucial to determine, at the outset, the rights and interests of Raval over the disputed properties, specifically as he invokes the deed of assignment that was executed in his favor by Flaviano Jr.

Peralta insists that the deed is void and thus cannot be deemed to have conferred to Raval the rights of a new owner and lessor. Contrary to these assertions, however, the Court sustains the validity of the assignment. Raval cannot be deemed a "total stranger" to Peralta's contract of lease with the Spouses Arzaga because by the subsequent transfers of rights over the leased premises, Peralta became the original lessors' successor-in-interest. It is material that the lone heir of the Spouses Arzaga, Flaviano Jr., has executed the subject deed of assignment, with pertinent portions that read:

> That for and in consideration of the sum of FIVE HUNDRED THOUSAND PESOS (₱500,000.00), Philippine Currency, in hand, paid and delivered unto me by JOSE ROY RAVAL, of legal age, married to LUISITA S[.] RAVAL, Filipino and resident of Brgy. 11, Laoag City, I, FLAVIANO ARZAGA, JR., hereby assign all my right[s], participation and interest in and into the said lots, including the improvement[s] standing thereon, with the right to substitute me in the case pending before the [CA] and the Supreme Court, if and when a petition for review on certiorari is filed therein and to file any other case before any court in relation to said property for the protection of his right as assignee[.][46]

In his petition, Peralta vehemently assails the validity and enforceability of the deed of assignment, as he likewise questions the ensuing right of Raval to seek the rescission of the contract of lease. On this matter, the Court refers to the outcome of a

[46] *Rollo* (G.R. No. 188467), p. 138.

separate petition for the registration of the deed of assignment and cancellation of TCT Nos. T-3538 and T-2406 that was filed by Raval with the RTC of Laoag City, Branch 15, and docketed as Cad. Case No. 51. On April 17, 1998, the deed of assignment between Flaviano Jr. and Raval was declared valid by the trial court, as it ordered the cancellation of the Spouses Arzaga's TCTs, and the issuance of new titles under Raval's name. This decision had become final and executory.[47] Accordingly, TCT Nos. T-30107 and T-30108 under Raval's name were issued by the Register of Deeds.[48]

The ruling in Cad. Case No. 51 resulted in an acknowledgment of Raval's rights over the property, his interest in the court action and entitlement to monthly rentals from Peralta. New TCTs were issued by virtue of the decision. When later called upon to rule on the petition for rescission of lease, the RTC then correctly rejected Peralta's claim against the agreement's legality, as it cited the prohibition against a collateral attack on the land titles. The trial court correctly explained:

> [T]he issue raised by [Peralta] that the Deed of Assignment is simulated and void ab initio, would necessarily also raise the issue of the validity of TCT Nos. T-30107 and T-30108. This issue cannot be collaterally attacked. There is no question that the titles of the properties covered by the Deed of Assignment had already been issued in favor of [Raval]. Well-settled is the rule that a certificate of title [cannot] be altered, modified or cancelled except in a direct proceeding in accordance with law x x x. In the instant case, it is obvious that any attack on the Deed of Assignment is also an attack upon [Raval's] title. In this case, it is being made collaterally as a defense to the action for rescission. This cannot be done. It is only when the object of the action or proceeding is to nullify the title, and thus challenge the judgment pursuant to which the title was decreed, that such an action can be considered a direct attack and, therefore, allowable x x x. Otherwise, a collateral attack would not [prosper], as it is improper in this action.[49]

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[47] Records, p. 631.

[48] *Rollo* (G.R. No. 188467), p. 74.

[49] *Id*. at 116-117.

Similarly, the Court sustains the validity of the deed of assignment upon which Raval anchored his claims against the subject properties and contract of lease. By being the assignee under the deed, Raval obtained the rights, interests and privileges of his predecessors-in-interest over the property, including the right to seek the rescission of the agreement, should valid grounds exist to support it. Peralta's defenses against Raval's claim of rights, in effect, challenge the prior decision of the trial court to recognize the deed of assignment and more importantly, the ruling that ordered the issuance of the TCTs under Raval's name. Essentially, it is also a challenge upon the TCTs that were already issued by the Register of Deeds. By law and jurisprudence, these TCTs that have been issued by virtue of the assignment, however, cannot be collaterally attacked by Peralta in this case.

Section 48 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, provides that "[a] certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law." Pursuant to this provision, the courts have consistently ruled against collateral attacks on land titles. In *Sps. Decaleng v. Bishop of the Missionary District of the Philippine Islands of Protestant Episcopal Church in the United States of America, et al.*,[50] the Court reiterated:

> It is a hornbook principle that "a certificate of title serves as evidence of an indefeasible title to the property in favor of the person whose name appears therein." x x x.
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> x x x x x x x x x
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> A torrens title cannot be attacked collaterally, and the issue on its validity can be raised only in an action expressly instituted for that purpose. A collateral attack is made when, in another action to obtain a different relief, the certificate of title is assailed as an incident in said action.[51] (Citations omitted)

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[50] 689 Phil. 422 (2012).

[51] *Id*. at 444.

Rescission of Lease Contracts

Considering that the subject contract of lease provided for a 40-year term and was executed in 1974, the agreement had already terminated in 2014. The issue of whether or not the lease should be ordered rescinded at this point in time, to the end that it would be declared of no further effect, is thus already moot and academic. "A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical value. As a rule, courts decline jurisdiction over such case, or dismiss it on ground of mootness."[52] The Court, nonetheless, still finds it needed to address other matters that are intertwined with the issue of rescission, especially as the termination of the lease is not the only necessary consequence of rescission. These other issues include the allegations of **prescription, the award of unpaid rentals plus moral damages, and Peralta's counterclaim against Raval**.

There are various provisions under the NCC that apply to rescissions of contracts. Among these are Article 1191[53] on the power to rescind in reciprocal obligations, Article 1380[54]

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[52] *Mendoza, et al. v. Mayor Villas, et al.,* 659 Phil. 409, 417 (2011), citing *Gunsi, Sr. v. Hon. Commissioners, Commission on Elections, et al.*, 599 Phil. 223, 229 (2009).

[53] **Article 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 party may choose between the fulfilment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfilment, 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.

[54] **Article 1380.** Contracts validly agreed upon may be rescinded in the cases established by law.

on contracts validly agreed upon by parties to be rescissible, Article 1381[55] on rescissible contracts under the law, Article 1389[56] on prescription of actions for rescission, and Article 1592[57] on rescission in sale of immovable property.

It must be emphasized though that specifically on the matter of rescission of lease agreements, Article 1659 of the NCC applies as a rule. It reads:

Article 1659. If the lessor or the lessee should not comply with the obligations set forth in Articles 1654 and 1657, the aggrieved party may ask for the rescission of the contract and indemnification for damages, or only the latter, allowing the contract to remain in force.

Article 1654 referred to in Article 1659 pertains to the obligations of a lessor in a lease agreement. Article 1657, on the other hand, enumerates the obligations of a lessee, as it provides:

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[55] **Article 1381.** The following contracts are rescissible.

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

(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.

[56] **Article 1389.** The action to claim rescission must be commenced within four years.

For persons under guardianship and for absentees, the period of four years shall not begin until the termination of the former's incapacity, or until the domicile of the latter is known.

[57] **Article 1592.** In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term.

Article 1657. The lessee is obliged:

(1) To pay the price of the lease according to the terms stipulated;

(2) To use the thing leased as a diligent father of a family, devoting it to the use stipulated; and in the absence of stipulation, to that which may be inferred from the nature of the thing leased, according to the custom of the place;

(3) To pay expenses for the deed of lease.

Given the rules that exclusively apply to leases, the other provisions of the NCC that deal with the issue of rescission may not be applicable to contracts of lease. To illustrate, Peralta's reference to Article 1389, when he argued that Raval's action had already prescribed for having been filed more than four years after the execution of the lease contract in 1974, is misplaced. For the same reason, Peralta erred in arguing that Raval's action should only be deemed a subsidiary remedy, such that it could not have been validly instituted if there were other legal means for reparation. Article 1389 applies to rescissions in Articles 1380 and 1381, which are distinct from rescissions of lease under Article 1659.

The limits on the application of Article 1389 was explained by the Court in *Unlad Resources Development Corporation, et al. v. Dragon, et al*.[58] The nature of an action filed under Article 1389, as well as the prescriptive period of four years that is provided under the provision, do not apply to all rescissible contracts but are limited to specific cases, particularly:

Article 1389 specifically refers to rescissible contracts as, clearly, this provision is under the chapter entitled "Rescissible Contracts."

In a previous case, this Court has held that **Article 1389**:

applies to rescissible contracts, as enumerated and defined in Articles 1380 and 1381. We must stress however, that

[58] 582 Phil. 61 (2008).

> the "rescission" in Article 1381 is not akin to the term "rescission" in Article 1191 and Article 1592. In Articles 1191 and 1592, the rescission is a principal action which seeks the resolution or cancellation of the contract while in **Article 1381, the action is a subsidiary one limited to cases of rescission for lesion** as enumerated in said article.
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> The prescriptive period applicable to rescission under Articles 1191 and 1592, is found in Article 1144, which provides that the action upon a written contract should be brought within ten years from the time the right of action accrues.[59] (Citation omitted and emphasis ours)

The same prescriptive period of 10 years, counted from the time that the right of action accrues, applies in the case at bar. Raval's cause of action did not refer to Article 1389, yet one that was based on a written contract. Thus, contrary to Peralta's insistent claim, the action for rescission had not yet prescribed at the time of its filing in 1998. Raval's cause of action accrued not on the date of the lease agreement's execution in 1974, but from the time that there was a violation and default by Peralta in his obligations under the lease agreement.

On this matter, Raval's complaint specified the violations that were allegedly committed by Peralta as a lessee. Specifically, rescission was sought because of Peralta's alleged refusal to render an accounting of unpaid monthly rentals, to vacate the second storey of the house, to remove the improvements constructed on the areas not covered by the lease, to operate and provide a water system and to refund the taxes paid by Flaviano Jr. These violations happened either immediately prior to Raval's repeated extrajudicial demands that began in August 1995, or after Peralta's refusal to heed to the demands. There was no indication that the violations dated back from the first few years of the lease agreement's effectivity in the 1970s. Clearly, the filing of the action for rescission in 1998 was within the 10-year prescriptive period that applies to the suit.

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[59] *Id*. at 76.

Unpaid Rentals and Moral Damages

Under Article 1659 of the NCC, an aggrieved party in a lease contract may ask for any of the following remedies: (1) the rescission of the contract; (2) rescission and indemnification for damages; and (3) only indemnification for damages, allowing the contract to remain in force.[60] These remedies were further explained by the Court in *Cetus Development, Inc. v. Court of Appeals*,[61] wherein it held that:

> The existence of said cause of action gives the lessor the right under Article 1659 of the [NCC] to ask for the rescission of the contract of lease and indemnification for damages, or only the latter, allowing the contract to remain in force. Accordingly, if the option chosen is for specific performance, then the demand referred to is obviously to pay rent or to comply with the conditions of the lease violated. However, if rescission is the option chosen, the demand must be for the lessee to pay rents or to comply with the conditions of the lease and to vacate. x x x.[62]

Although the CA declared Raval not entitled to rescission, it nonetheless still ordered Peralta to pay what were supposedly unpaid rentals from August 1998 until full payment, plus 12% interest *per annum* and moral damages. The Court finds it necessary to delete these awards, and to instead sustain the RTC's decision to deny Raval of his monetary claims.

It is not disputed that at one point during the effectivity of the lease, Peralta began depositing his rental payments in an account that was maintained "in trust for" Flaviano Jr. The RTC provided the following factual findings in its Decision dated May 17, 2005:

> The evidence for [Peralta] reveals a historical antecedent where Mrs. Gloria F. Peralta, wife of [Peralta], earlier adopted a modus-vivendi in the erstwhile lease contract with [Flaviano Jr.], by which

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[60] *Chua v. Victorio,* 472 Phil. 489, 496 (2004).

[61] 257 Phil. 73 (1989).

[62] *Id*. at 80-81.

payments were made to lessor. This mode of settling the monthly rentals was through the facility of the banking system. Mrs. Peralta successively opened bank accounts with several banks, i.e., Land Bank of the Philippines, Philippine Commercial International Bank, Asian Bank and China Bank. The name invariably appearing as depositor in the passbooks issued by said banks is as follows; "Gloria F. Peralta ITF Flaviano Arzaga, Jr." The letters ITF mean: "in-trust-for". By virtue of this banking arrangement, lessee paid lessor his periodic obligations by depositing the needed amount with the bank, which the latter withdrew from said bank in satisfaction of the former's obligation.[63]

Given the evidence proving that Peralta had been depositing rentals to the ITF accounts even up to the year 2004,[64] the trial court declared:

> In the instant case, [Raval] urges this Court to find for [Raval] on a claim of contractual breach in the payment of rentals. The evidence shows otherwise. The modus-vivendi earlier adopted by lessee's wife of opening bank accounts "in-trust-for" the lessor was found by the [CA] as a proper mode of effecting payments of the monthly rentals on the lease. [Peralta] continued with this practice even after the execution of the Deed of Assignment. It was understandable for lessee to continue with this mode of payment because he had no privity of contract with the Deed of Assignment. Accordingly, this Court is of the same persuasion as the [CA] in CA G.R. No. CV 30396 that [Peralta's] mode of payment through the "in-trust-for" account is proper and finds that he [Peralta] was not remiss in the payment of the monthly rentals due on the lease.
>
> x x x x x x x x x
>
> There is no question that the money for the rental was in the bank. So to speak, 'it was there for the taking'. It was therefore, incumbent upon [Flaviano Jr.] and [Raval] to arrange between them on how to withdraw the money from the bank, to be paid to the rightful payee or beneficiary. From the standpoint of lessee,

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[63] *Rollo* (G.R. No. 188467), p. 119.

[64] *Id*. at 119-121.

he has already complied with his obligation to pay the monthly rentals due to the fact that his mode of payment was earlier sustained as proper by the [CA] in the precursor case. x x x.[65]

Even as the Court now declares Raval to be a valid assignee under the deed that bound Peralta as a lessee, all payments made by the latter for the account of Flaviano Jr. could not be simply disregarded for the purpose of determining Peralta's compliance with his obligation to pay the monthly rentals. The RTC itself sustained the acceptability of such measure. Thus, the mechanism negated the supposed failure to pay, as well as the alleged blatant refusal of Peralta to satisfy his obligation as a lessee.

All payments made by Peralta through the bank accounts in trust for Flaviano Jr. shall be deemed valid payments for the monthly rentals. Since the records confirmed that Peralta has been paying his monthly rentals up to the time and even after the complaint for rescission was filed in 1998, the prayer in the complaint for unpaid rentals should have been denied. Accordingly, the CA's award of monthly rentals is deleted.

The award of moral damages is likewise deleted. "Moral damages are not recoverable simply because a contract has been breached. They are recoverable only if the party from whom it is claimed acted fraudulently or in bad faith or in wanton disregard of his contractual obligations. The breach must be wanton, reckless, malicious or in bad faith, and oppressive or abusive."[66] It has been explained by the Court that Peralta did not appear to have acted in this manner.

Peralta's Counterclaim

In his Answer to Raval's complaint, Peralta made the following counterclaims: ₱500,000.00 as moral damages, ₱50,000.00 as exemplary damages and ₱30,000.00 as attorney's fees. To justify

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[65] *Id*. at 122-123.

[66] *Philippine Savings Bank v. Spouses Castillo, et al.*, 664 Phil. 774, 786 (2011).

his claim, Peralta argued that the filing of the case against him was driven by Raval's desire to harass and humiliate him. The Court rejects this assertion.

As may be gleaned from the records, Raval's filing of the complaint for rescission was preceded by numerous attempts towards an amicable resolution of the dispute between him and Peralta. Upon a belief that Peralta breached the subject contract of lease, Raval made successive extrajudicial demands to compel Peralta to comply with his obligations as a lessee. The issue was also brought to barangay conciliation twice.

Had the parties agreed towards negotiations, then the filing of a court action might not have been resorted to. From these antecedents, it is clear that the action for rescission was not filed purposely to humiliate or harass Peralta, but to seek redress for what Raval believed was a violation of his rights as the new owner of the subject lots, and lessor to Peralta. This barred any justification for an award of moral damages, which is ordinarily warranted for acts that are tainted with bad faith. Bad faith imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud. It is a question of intention, which can be inferred from one's conduct and/or contemporaneous statements.[67] In *J. Marketing Corporation v. Sia, Jr.*,[68] the Court also emphasized that the adverse result of an action – dismissal of the petitioner's complaint – does not *per se* make an act unlawful and subject the actor to the payment of moral damages. It is not sound public policy to place a premium on the right to litigate. No damages can be charged on those who may exercise such precious right in good faith, even if done erroneously.[69]

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[67] *Adriano, et al. v. Lasala, et al.,* 719 Phil. 408, 419 (2013).

[68] 349 Phil. 513 (1998).

[69] *Id.* at 517.

The demands for exemplary damages and attorney's fees are likewise denied. As regards exemplary damages, it is settled that to warrant its award, the wrongful act must be accompanied by bad faith, and the guilty party acted in a wanton, fraudulent, reckless or malevolent manner.[70] Attorney's fees, on the other hand, is proper only if a party was forced to litigate and incur expenses to protect his right and interest by reason of an unjustified act or omission of the party for whom it is sought. The award of attorney's fees is more of an exception than the general rule, since it is not sound policy to place a penalty on the right to litigate.[71]

WHEREFORE, the petition in G.R. No. 188764 filed by Jose Roy B. Raval is **DENIED**.

The petition in G.R. No. 188467 filed by Renato Ma. R. Peralta is **PARTLY GRANTED.** The Decision dated October 8, 2008 of the Court of Appeals in CA-G.R. CV No. 85685 is **AFFIRMED** with **MODIFICATION** in that the order upon Renato Ma. R. Peralta to pay the unpaid monthly rentals, interest and attorney's fees is **DELETED.**

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, del Castillo,** and *Jardeleza, JJ.,* concur.

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[70] *Adriano, et al. v. Lasala, et al., supra* note 67, at 420.

[71] *Banco Filipino Savings and Mortgage Bank v. Lazaro,* 689 Phil. 574, 587-588 (2012).

* Additional Member per Raffle dated March 27, 2017 *vice* Associate Justice Noel G. Tijam.

SECOND DIVISION

[G.R. No. 191545. March 29, 2017]

HEIRS OF AUGUSTO SALAS, JR., represented by TERESITA D. SALAS, *petitioners, vs.* **MARCIANO CABUNGCAL, SERAFIN CASTILLO, DOMINGO M. MANTUANO, MANOLITO D. BINAY, MARIA M. CABUNGCAL, REMON C. RAMOS, NENITA R. BINAY, DOMINGO L. MANTUANO, NENITA L. GUERRA, ROSALINA B. MANTUANO, DOMINADOR C. CASTILLO, LEALINE M. CABUNGCAL, ALBERTO CAPULOY, ALFREDO VALENCIA, MARIA L. VALENCIA, GERARDO GUERRA, GREGORIO M. LATAYAN, REMEDIOS M. GUEVARRA, JOSE C. BASCONCILLO, APLONAR TENORIO, JULIANA V. SUMAYA, ANTONIO C. HERNANDEZ, VERONICA MILLENA, TERSITA D.C. CASTILLO, DANTE M. LUSTRE, EFIPANIO M. CABUNGCAL, NESTOR V. LATINA, NENITA LLORCA, ROMEL L. LOMIDA, MARILOU CASTILLO, RUBEN CASTILLO, ARNOLD MANALO, RICARDO CAPULOY, AMELITA CALIMBAS, ROSALITA C. ELFANTE, LANIE CAMPIT, RODILLO RENTON, RUSTICO AMAZONA, LUZVIMINDA DE OCAMPO, DANILO DE OCAMPO, JOSE DARWIN LISTANCO, NEMESIO CABUNGCAL, RENATO ALZATE, BERNARDO AQUINO, RODRIGO CABUNGCAL, CHONA G. AGUILA, ROSA M. MANTUANO, ALLAN M. LUSTRE, FELIPE LOQUEZ, DOMINGO MANALO, DOMINADOR M. MANALO, JENNIFER H. MALIBIRAN, FELIXBERTO RITAN, LEONILA FERRER, TOMAS M. LORENO, CELSO VALENCIA, CONSTANTINO LUSTRE, REYNALDO C. MALIBIRAN, ORLANDO C. MALIBIRAN, RICARDO LLAMOSO AND SANTA DIMAYUGA, represented by JOSE C. BASCONILLO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (RA 6657); COVERS ALL PUBLIC AND PRIVATE AGRICULTURAL LANDS, SAVE THOSE NOT USED OR SUITABLE FOR AGRICULTURAL ACTIVITIES; ELABORATED.— The 1987 Constitution mandates the just distribution of all agricultural lands, subject to the limits prescribed by Congress. Under Article II, Section 21 of the Constitution, "[t]he State shall promote comprehensive rural development and agrarian reform." Article XIII, Section 4 provides that an agrarian reform program shall be carried out in the country: x x x On June 10, 1988, Republic Act No. 6657 or the Comprehensive Agrarian Reform Law was enacted to fulfill this constitutional mandate. The Comprehensive Agrarian Reform Law covers all public and private agricultural lands, as provided in Proclamation No. 131 and Executive Order No. 229, including other lands of the public domain suitable for agriculture, regardless of tenurial arrangement and commodity produced. However, a maximum of five (5) hectares of the landowner's compact or contiguous landholdings may not be distributed to qualified beneficiaries, as it is within the landowner's rights to retain this area. The Comprehensive Agrarian Reform Program covers the following lands: (1) all alienable and disposable lands of the public domain devoted to or suitable for agriculture; (2) all lands of the public domain exceeding the total area of five hectares and below to be retained by the landowner; (3) all government-owned lands that are devoted to or suitable for agriculture; and (4) all private lands devoted to or suitable for agriculture, regardless of the agricultural products raised or can be raised on these lands. Meanwhile, Section 10 of the Comprehensive Agrarian Reform provides the types of lands that are excluded therefrom: x x x The Comprehensive Agrarian Reform Law covers all agricultural lands, save for those not used or suitable for agricultural activities.

2. ID.; ID.; ID.; AGRICULTURAL LAND; DEFINED AS LAND DEVOTED TO AGRICULTURAL ACTIVITY AND NOT CLASSIFIED AS MINERAL, FOREST, RESIDENTIAL, COMMERCIAL OR INDUSTRIAL LAND.— The law defines agricultural land as "land devoted to agricultural activity . . . and not classified as mineral, forest, residential, commercial or industrial land." For agricultural land to be considered devoted

to an agricultural activity, there must be "cultivation of the soil, planting of crops, growing of fruit trees, raising of livestock, poultry or fish, including the harvesting of such farm products, and other farm activities and practices performed by a farmer in conjunction with such farming operations done by persons whether natural or juridical." Aside from being devoted to an agricultural activity, the land must, likewise, not have been classified as mineral, forest, residential, commercial, or industrial land.

3. ID.; ID.; RECLASSIFICATION OF AGRICULTURAL LANDS INTO NON-AGRICULTURAL LANDS IS SUBJECT TO THE APPROVAL OF THE DEPARTMENT OF AGRARIAN REFORM (DAR); APPROVAL NOT REQUIRED FOR LAND CONVERSIONS PRIOR TO THE EFFECTIVITY OF RA 6657 ON JUNE 15, 1988.— Section 65 of Republic Act No. 6657, as reiterated by Administrative Order No. 01-90, states that reclassification or conversion of agricultural lands into non-agricultural lands is subject to the approval of the Department of Agrarian Reform. x x x Before the effectivity of Republic Act No. 6657 on June 15, 1988, the Department of Agrarian Reform had no authority to approve the conversion or reclassification of agricultural lands by local governments. Under Section 3 of Republic Act No. 2264, local governments had the power to approve reclassification of agricultural lands. x x x [On] [t]he question of whether the reclassification by local governments prior to the enactment of Republic Act No. 6657 still needed the approval of the Department of Agrarian Reform, x x x then Secretary of Justice Franklin M. Drilon issued Department of Justice Opinion No. 44 on March 16, 1990, stating that the conversion of agricultural lands covered by Republic Act No. 6657 did not need the authority of the Department of Agrarian Reform before the date of effectivity of Republic Act No. 6657 on June 15, 1988. The Department of Agrarian Reform's authority to approve conversions only began on June 15, 1988. x x x In *Natalia Realty Inc. v. Department of Agrarian Reform*, lands not devoted to agricultural activity, including lands previously converted to non-agricultural use prior to the effectivity of Republic Act No. 6657 by government agencies other than the Department of Agrarian Reform, were declared outside the coverage of the Comprehensive Agrarian Reform Law.

4. ID.; ID.; AGRICULTURAL LANDS; INCLUDES FARMLOT SUBDIVISION, PROPERLY SUBJECTED TO COMPULSORY COVERAGE UNDER THE COMPREHENSIVE AGRARIAN REFORM LAW.— The definition of a "farmlot subdivision" under the HLURB Rules and Regulations Implementing Farmlot Subdivision Plan (HLURB Regulations) leaves no doubt that it is an "agricultural land" as defined under Republic Act No. 3844. [Thus,] x x x Rule V, Section 18 (d) of the HLURB Regulations provides:. . . .d. A Farmlot Subdivision – is a planned community intended primarily for *intensive agricultural activities* and secondarily for housing. A planned community consists of the provision for basic utilities judicious allocation of areas, good layout based on sound planning principles. x x x The HLURB Regulations also provide for the minimum site criteria for a farmlot subdivision plan. First, it must be near a marketplace *where the farm produce can be utilized* and marketed. Second, it must meet the *needs of farming activities*. Third, the topography, soil, and climate must be *suited for planting crops*. These highlight a farmlot subdivision's primarily agricultural nature. x x x The reclassification of Salas' landholding into a farmlot subdivision, although effected before Republic Act No. 6657, has not changed the nature of these agricultural lands, the legal relationships existing over such lands, or the agricultural usability of the lands. Thus, these lots were properly subjected to compulsory coverage under the Comprehensive Agrarian Reform Law. x x x Section 166 (1) of Republic Act No. 3844 defined an agricultural land as "*land devoted to any growth*, including but not limited to crop lands[.]" The law neither made reference to a "farmlot subdivision," nor did it exclude a farmlot from the definition of an agricultural land. Not being excluded, Salas' landholdings were thus contemplated in the definition of an agricultural land under Republic Act No. 3844. Likewise, Republic Act No. 6657 does not exclude a farmlot subdivision from the definition of an agricultural land.

5. ID.; ID.; WHAT DETERMINES A TRACT OF LAND'S INCLUSION IN THE PROGRAM IS ITS SUITABILITY FOR ANY AGRICULTURAL ACTIVITY.— Republic Act No. 6657 never required that a landholding must be exclusively used for agricultural purposes to be covered by the Comprehensive Agrarian Reform Program. What determines a

> tract of land's inclusion in the program is its suitability for any agricultural activity. x x x Agricultural activity refers to the "cultivation of the soil, planting of crops, growing of fruit trees, raising of livestock, poultry or fish, including the harvesting of such farm products, and other farm activities and practices performed by a farmer in conjunction with such farming operations done by persons whether natural or juridical."

APPEARANCES OF COUNSEL

Lazaro Law Firm for petitioners.
Erwin G. Ruiz for respondents.

D E C I S I O N

LEONEN, *J.*:

Republic Act No. 6657 or the Comprehensive Agrarian Reform Law generally covers all public and private agricultural lands.

This resolves a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure. The Petition[1] is an offshoot of the Court of Appeals Second Division's Decision[2] dated October 26, 2009 and Resolution[3] dated March 1, 2010 in the case docketed as CA-G.R. SP No. 103703.

Augusto Salas, Jr. (Salas) was the registered owner of a vast tract of agricultural land[4] traversing five barangays—Pusil, Bulacnin, Balintawak, Marawoy, and Inosluban—in Lipa City, Batangas.[5] Respondents Marciano Cabungcal, Serafin Castillo, Domingo M. Mantuano, Manolito D. Binay, Maria M. Cabungcal, Remon C. Ramos, Nenita R. Binay, Domingo L. Mantuano,

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[1] *Rollo,* pp. 3-34.

[2] *Id*. at 35-57.

[3] *Id*. at 58-61.

[4] *Id*. at 37.

[5] *Id*. at 37-39.

Nenita L. Guerra, Rosalina B. Mantuano, Dominador C. Castillo, Lealine M. Cabungcal, Alberto Capuloy, Alfredo Valencia, Maria L. Valencia, Gerardo Guerra, Gregorio M. Latayan, Remedios M. Guevarra, Jose C. Basconcillo, Aplonar Tenorio, Juliana V. Sumaya, Antonio C. Hernandez, Veronica Millena, Tersita D.C. Castillo, Dante M. Lustre, Efipanio M. Cabungcal, Nestor V. Latina, Nenita Llorca, Romel L. Lomida, Marilou Castillo, Ruben Castillo, Arnold Manalo, Ricardo Capuloy, Amelita Calimbas, Rosalita C. Elfante, Lanie Campit, Rodillo Renton, Rustico Amazona, Luzviminda De Ocampo, Danilo De Ocampo, Jose Darwin Listanco, Nemesio Cabungcal, Renato Alzate, Bernardo Aquino, Rodrigo Cabungcal, Chona G. Aguila, Rosa M. Mantuano, Allan M. Lustre, Felipe Loquez, Domingo Manalo, Dominador M. Manalo, Jennifer H. Malibiran, Felixberto Ritan, Leonila Ferrer, Tomas M. Loreno, Celso Valencia, Constantino Lustre, Reynaldo C. Malibiran, Orlando C. Malibiran, Ricardo Llamoso and Santa Dimayuga, represented by Jose C. Basconillo were tenant farmers in his agricultural land[6] and are agrarian reform beneficiaries under the Comprehensive Agrarian Reform Program.

According to Transfer Certificate of Title (TCT) No. T-2807,[7] the agricultural land of Salas had an aggregate area of 148.4354 hectares (roughly 1.5 million square meters),[8] covering Lots 1 and 2.[9] Lot 1 spanned 56.1361 hectares,[10] while Lot 2 spanned 92.2993 hectares.[11]

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[6] *Id*. at 82, Department of Agrarian Reform Order dated September 19, 2006. They claimed to have so worked even before Republic Act No. 6657 took effect in 1988.

[7] *Id*. at 137, OSG Comment.

[8] *Id*. at 37-38.

[9] *Id*. at 6-8.

[10] *Id*. at 38.

[11] *Id*. at 39.

Under Section 3[12] of Republic Act No. 2264,[13] the applicable law at that time, municipal and city councils were empowered to adopt zoning and subdivision ordinances or regulations, in consultation with the National Planning Commission.

On February 19, 1977, then President Ferdinand Marcos created the National Coordinating Council for Town Planning, Housing and Zoning (National Coordinating Council) to prepare and oversee all government town plans, housing, and zoning measures.[14]

After a year, the National Coordinating Council was dissolved and replaced by the Human Settlements Regulatory Commission.[15] Under Letter of Instruction No. 729, the power of the local government to convert or reclassify agricultural lands became subject to the approval of the Human Settlements Regulatory Commission.[16]

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[12] Republic Act No. 2264, Sec. 3 provides:

Section 3. Additional Powers of Provincial Boards, Municipal Boards or City Councils and Municipal and Regularly Organized Municipal District Councils. –

x x x x x x x x x

Power to adopt zoning and planning ordinances. – Any provision of law to the contrary notwithstanding, Municipal Boards or City Councils in cities, and Municipal Councils in municipalities are hereby authorized to adopt zoning and subdivision ordinances or regulations for their respective cities and municipalities subject to the approval of the City Mayor or Municipal Mayor, as the case may be. Cities and municipalities may, however, consult the National Planning Commission on matters pertaining to planning and zoning.

[13] An Act Amending The Laws Governing Local Governments By Increasing Their Autonomy And Reorganizing Provincial Governments. Also known as the Local Autonomy Act of 1959.

[14] L.O.I. No. 511 (1977).

[15] *Ong v. Imperial*, G.R. No. 197127, July 15, 2015, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/197127.pdf> [Per *J*. Leonardo-De Castro, First Division].

[16] See *Pasong Bayabas Farmers Association Inc. v. Court of Appeals*, 473 Phil. 64 (2004) [Per *J*. Callejo Sr., Second Division].

The Human Settlements Regulatory Commission was tasked to "[r]eview, evaluate and approve or disapprove comprehensive land use development plans and zoning ordinances of local government[s]."[17]

On December 2, 1981, the Human Settlements Regulatory Commission issued Resolution No. 35,[18] approving the Town Plan/ Zoning Ordinance of Lipa City, Batangas.[19] Pursuant to the approved town plan of Lipa City, Salas' agricultural land was reclassified as a farmlot subdivision[20] for cultivation, livestock production, or agro-forestry.[21]

Sometime in May 1987, Salas entered into an Owner-Contractor Agreement with Laperal Realty Corporation (Laperal Realty) for the development, subdivision, and sale of his land.[22]

On November 17, 1987, the Human Settlements Regulatory Commission, now Housing and Land Use Regulatory Board (HLURB),[23] issued Development Permit No. 7-0370, granting Laperal Realty a permit for a Nature Farmlots subdivision.[24]

Salas subdivided Lot 1 into Lots A to C under Psd-04-0262541,[25] and Lot 2 into Lots A to K under Psd-04-0262542.[26] A total of 14 subdivided lots were titled in his name, as follows:[27]

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[17] Exec. Order No. 648 (1981), Art. IV, Sec. 5(b).

[18] *Rollo,* p. 44.

[19] *Id*. at 114, Comment.

[20] *Id*. at 47.

[21] *Id*. at 140, Comment.

[22] *Id*. at 38.

[23] Executive Order No. 90 (1996), Sec. 1 (c).

[24] *Rollo*, p. 87, Department of Agrarian Reform Order dated January 7, 2004.

[25] *Id*. at 38.

[26] *Id*. at 38-39.

[27] *Id*. at 38.

Former Lot 1 Description	Area in square meters	New Titles Issued
Lot A (Bgy. Inosluban)	234,967 (23.4967 ha.)	TCT No. 67660
Lot B (Bgy. Inosluban)	9,366 (.9366 ha.)	TCT No. 67661
Lot C (Bgy. Marawoy)	317,028 (31.7028 ha.)	TCT No. 67662
Total	**561,361 (56.1361 ha.)**	

Former Lot 2 Description	Area in square meters	New Titles Issued
Lot A (Bgy. Balintawak)	3,058 (.3058 ha.)	TCT No. 67663
Lot B (Bgy. Balintawak)	90,587 (9.0587 ha.)	TCT No. 67664
Lot C (Bgy. Bulacnin)	2,925 (.2925 ha.)	TCT No. 67665
Lot D (Bgy. Bulacnin)	75,934 (7.5934 ha.)	TCT No. 67666
Lot E (Bgy. Bulacnin)	13,909 (1.3909 ha.)	TCT No. 67667
Lot F (Bgy. Pusil)	106,509 (10.6509 ha.)	TCT No. 67668
Lot G (Bgy. Pusil)	60,121 (6.0121 ha.)	TCT No. 67669
Lot H (Bgy. Pusil)	89,202 (8.9202 ha.)	TCT No. 67670
Lot I (Bgy. Pusil)	9,086 (.9086 ha.)	TCT No. 67671
Lot J (Bgy. Pusil)	460,633 (46.0633 ha.)	TCT No. 67672
Lot K (Bgy. Pusil)	11,029 (1.1029 ha.)	TCT No. 67673
Total	**922,993 (92.2993 ha.)**	

Under Psd-04-027665, Salas further subdivided Lot J into 23 smaller lots, with areas ranging from .1025 to 2.1663 hectares each.[28] Then, he consolidated Lots F, G, and H and subdivided them into 17 smaller lots under Psd-04-003573, with areas ranging from .1546 to 2.0101 hectares each.[29]

The transfer certificates of title for these subdivided lots were all issued in Salas' name.[30]

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[28] *Id*. at 39.

[29] *Id*.

[30] *Id*. at 39-40.

Meanwhile, respondents continued to farm on his landholdings.[31]

On June 10, 1988, Republic Act No. 6657[32] was signed into law and became effective on June 15, 1988.[33] The law sought to expand the coverage of the government's agrarian reform program.[34] Salas' landholdings were among those contemplated for acquisition and distribution to qualified farmer beneficiaries.[35]

Before HLURB, Salas applied for a permission to sell his subdivided lots.[36] On July 12, 1988, HLURB issued a License to Sell[37] Phase 1 of the farmlot subdivision, consisting of 31 lots.[38]

From July 12, 1988 to October 1989, Laperal Realty sold unspecified portions of the subdivided lots.[39]

Salas also executed in favor of Laperal Realty a Special Power of Attorney "to exercise general control, supervision and management of the sale of his land[holdings]".[40]

On June 10, 1989, Salas went on a business trip to Nueva Ecija and never came back.[41]

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[31] *Id.* at 82, Department of Agrarian Reform Order dated September 19, 2006.

[32] An Act Instituting A Comprehensive Agrarian Reform Program To Promote Social Justice And Industrialization, Providing The Mechanism For Its Implementation, And For Other Purposes. Also known as the Comprehensive Agrarian Reform Law of 1988.

[33] *Rollo,* pp. 40-41.

[34] *Id.* at 41.

[35] *Id.*

[36] *Id.* at 40.

[37] Under Section 12 of Rule III of the Human Settlements Regulatory Commission (now HLURB) Rules and Regulations Implementing Farmlot Subdivision Plan, farmlots may only be disposed of pursuant to a license to sell by the HLURB.

[38] *Rollo,* p. 40.

[39] *Id.*

[40] *Heirs of Salas, Jr. v. Laperal Realty Corporation*, 378 Phil. 369, 372 (1999) [Per *J.* De Leon Jr., Second Division].

[41] *Heirs of Salas, Jr. v. Laperal Realty Corporation*, 378 Phil. 369, 372 (1999) [Per *J.* De Leon Jr., Second Division].

Pursuant to the Special Power of Attorney,[42] Laperal Realty subdivided Salas' property and sold unspecified portions of these to Rockway Real Estate Corporation and to South Ridge Village, Inc. on February 22, 1990, as well as to spouses Thelma and Gregorio Abrajano, to Oscar Dacillo, and to spouses Virginia and Rodel Lava on June 27, 1991.[43]

The sale of these lots resulted in only 82.5569 hectares of the original 148.4354 hectares unsold and remaining under Salas' name,[44] namely, Lots A to C (from the former Lot 1) and Lots B and J-7 to J-18 (from the former Lot 2), totaling 16 lots. Thus:[45]

Salas' remaining lots	**Area (in hectares)**	**TCT No.**
Lot A	23.4967	67660
Lot B	0.9366	67661
Lot C	31.7028	67662
Lot B	9.0587	67664
Lot J-7	1.2159	68223
Lot J-8	1.0757	68224
Lot J-9	1.2158	68225
Lot J-10	1.3356	68226
Lot J-11	1.0000	68227
Lot J-12	1.0000	68228
Lot J-13	1.4802	68229
Lot J-14	2.0443	68230
Lot J-15	1.8060	68231
Lot J-16	2.1663	68232
Lot J-17	1.5454	68233
Lot J-18	1.4769	68234
Total	**82.5569 hectares**	

[42] *Id.* at 373.

[43] *Id.*

[44] *Rollo,* p. 40.

[45] *Id.*

Petitioners Heirs of Salas assailed the inclusion of their landholdings, i.e. the 16 lots, under the Comprehensive Agrarian Reform Program.[46] They filed protest letters before the Department of Agrarian Reform on January 8, 1991, and before the Department of Agrarian Reform Adjudication Board on April 12, 1991.[47]

On May 31, 1993, before the protests were resolved, the Municipal Agrarian Reform Officer of Lipa City sent a Notice of Coverage[48] for the landholdings that would be subject to acquisition and distribution to qualified farmer beneficiaries.

Subsequently, the Department of Agrarian Reform denied petitioners' protest for lack of merit, while the Department of Agrarian Reform Adjudication Board dismissed it for lack of jurisdiction.[49]

The Notice of Land Valuation and Acquisition was sent on December 28, 1993.[50]

Between 1995 and 1996, agrarian reform beneficiaries were given Certificates of Land Ownership Award over portions of Salas' landholdings, covering a total area of about 40.8588 hectares.[51]

Thirteen (13) lots consisting of Lot A (from the former Lot 1) and Lots J-7 to J-18 (from the former Lot 2) were distributed to agrarian reform beneficiaries.[52] The lots were registered in their names, as follows:[53]

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[46] *Id*. at 41.

[47] *Id*.

[48] *Id*. at 41-42.

[49] *Rollo,* p. 41.

[50] *Id*. at 42.

[51] *Id*.

[52] *Id*. at 42-43.

[53] *Id*.

Lot	Former TCT No.	Agrarian Reform Beneficiaries	Area (has.)	CLOA No.
Lot A	67660	Romeo Mantuano	0.0252	00189533
		Respondent Rustico G. Amazona	0.0277	
		Jaime Latayan	0.0308	
		Rogelio Q. Valencia	0.0252	00189534
		Jose B. Guerra	0.0359	00189535
		Respondent Gerardo Guerra	0.0327	00189536
		Alberto B. Guerra	0.0384	00189537
		Respondent Nenita M. Llorca	0.0457	00189538
		Respondent Maria L. Valencia	0.0383	00189539
		(Church/basketball court)	0.0843	
		Respondent Marciano V. Cabungcal	0.0686	00189542
		Ernesto Latayan	0.0509	
		Feliciano Cuenca	0.0578	
		Respondent Gregorio M. Latayan	0.0509	00189541
		Francisco Cabungcal	0.0696	00189540
		Antonina Mantuano	0.0729	
		Lorenzo Ritan	0.0934	
		Bernardo P. Loza	0.0678	00189543
		Respondent Domingo M. Manalo	0.5979	00189544
		Eduardo Castillo	0.5979	00189545
		Respondent Nestor V. Latina	1.1958	00189546
		Romeo Mantuano	1.1958	
		Respondent Alfredo L. Valencia	1.1958	00189547
		Sergio I. Valencia	1.1959	00189548
		Maximo M. Loza	1.1959	00189549
		Manuel L. Castillo	1.1958	00189550
		Respondent Nenita M. Llorca	1.1959	00189551
		Jose V. Malibiran	1.1959	00189552
		Alberto B. Guerra	1.1958	00189553

		Jose B. Guerra	1.1958	00189554
		Respondent Gregorio M. Latayan	1.1957	00189555
		Rustico O. Roxas	1.1959	00189556
		Dominador C. Castillo	0.5979	00189557
		Nemesio V. Cabungcal	0.5957	00189558
		Francisco V. Cabungcal	1.1951	00189559
		Marciano V. Cabungcal	1.1958	00189560
		Mario Castillo	1.1985	00189561
		Mario Castillo	1.1958	00189562
		Rosemarie C. De Guzman	0.5976	00189563
		Ronnie D. Binay	0.5976	00189564
Lot J-7	68223	Jaime and Celemente Latayan	1.2159	00305426
Lot J-8	68224	Amado Conrado Latayan and Clemente Latayan	1.0757	00305427
Lot J-9	68225	Amado Conrado Latayan and Clemente Latayan	1.2158	00305428
Lot J-10	68226	Candido L. Amazon, et al.	1.3356	00305429
Lot J-11	68227	Ernesto M. and Diomedes H. Latayan	1	00305430
Lot J-12	68228	Ernesto M. Latayan	1	00305431
Lot J-13	68229		1.4802	
Lot J-14	68230	Conchita M. Latayan	2.0443	00305417
Lot J-15	68231	Eugenia V. Latina and Conchita M. Latayan	1.8060	00305433
Lot J-16	68232	Eugenia V. Latina and Gabino Latayan	2.1663	00305418
Lot J-17	68233	Gabino Latayan	1.5454	00305419
Lot J-18	68234	Gabino Latayan	1.4769	00305434
		Total	**40.8588 Hectares**	

The 14th lot, Lot C from the former Lot 1, consisting of 31.7028 hectares, was also distributed to the beneficiaries.[54]

Thus, of the 16 lots unsold and remaining under Salas' name,[55] 14 lots were awarded to agrarian reform beneficiaries.[56] Only

[54] *Id.* at 89, Department of Agrarian Reform Order dated January 7, 2004.

[55] *Id*. at 40, Court of Appeals Decision.

[56] *Id*. at 51.

two lots remained with Salas: 9.0587 hectares (Lot B from the former Lot 2) and 9.3864 (Lot B from the former Lot 1).[57]

Meanwhile, the 17th lot, Lot C from the former Lot 2, 0.2925 hectares, was designated as a school site;[58] thus, it was not included in the scope of the agrarian reform program.[59]

On December 8, 1995, before the Department of Agrarian Reform Adjudication Board, an action was filed for the cancellation of the Certificates of Land Ownership Award, with a prayer for the issuance of a temporary restraining order to enjoin the distribution of their landholdings to qualified farmer beneficiaries.[60]

By 1996, Salas, Jr. had already been missing for more than seven (7) years.[61] On August 6, 1996, Salas' wife, Teresita Diaz Salas (Teresita), petitioned the court to declare him presumptively dead.[62] The court granted the petition on December 12, 1996,[63] and Teresita was appointed as administrator of his estate.[64]

In 1997, the Department of Agrarian Reform Adjudication Board denied petitioners' action for the cancellation of respondents' Certificates of Land Ownership Award.[65]

On July 29, 1997, the Estate of Salas, with Teresita as the administrator, filed an Application for Exemption/Exclusion

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[57] *Id*.

[58] *Id*. at. 39.

[59] *Id*. at 89, Department of Agrarian Reform Order dated January 7, 2004.

[60] *Id*. at 42, Court of Appeals Decision.

[61] *Heirs of Salas v. Laperal Realty Corporation*, 378 Phil. 369, 372 (1999) [Per *J*. De Leon Jr., Second Division].

[62] *Rollo,* p. 41.

[63] *Heirs of Salas v. Laperal Realty Corporation*, 378 Phil. 369, 372 (1999) [Per *J.* De Leon Jr., Second Division].

[64] *Rollo,* p. 41.

[65] *Id*. at 42.

from the Comprehensive Agrarian Reform Program for the 17 lots before the Department of Agrarian Reform.[66] This was allegedly not acted upon.[67]

Meanwhile, the Center for Land Use, Policy, Planning, and Implementation II sought for a clarification with the HLURB regarding the definition of a farmlot subdivision.[68] On July 16, 1998, then HLURB Commissioner Francisco L. Dagnalan stated that a farmlot subdivision is a "planned community intended primarily for intensive agricultural activities secondarily for housing."[69] Such farmlot must be "located in the fringes of the urban core of cities and municipalities."[70]

On April 29, 2001,[71] the Estate of Salas again filed an application for exemption from the coverage of the Comprehensive Agrarian Reform Program for the 17 parcels of land before the Department of Agrarian Reform Center for Land Use, Policy, Planning, and Implementation II.[72] Petitioners prayed that an aggregate area of 82.8494 hectares be exempted from the Comprehensive Agrarian Reform Program.[73] Located in Barangays Bulacnin and Inosluban-Marawoy, Lipa City,[74] these lots were as follows:[75]

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[66] *Id*. at 43.

[67] *Id*.

[68] *Id*. at 89, Department of Agrarian Reform Order dated January 7, 2004.

[69] *Id*. at 90, Department of Agrarian Reform Order dated January 7, 2004.

[70] *Id*.

[71] *Id*. at 96.

[72] The CLUPPI is a "'one-stop-shop' [that] handles all matters regarding land use conversion, exemption and exclusion." (Adm. Order No. 02-02, Institutionalization of the Center for Land Use Policy, Planning and Implementation)

[73] *Id*. at 87.

[74] *Id*. at 92, Department of Agrarian Reform Order dated January 7, 2004.

[75] *Id*. at 86, Department of Agrarian Reform Order dated January 7, 2004.

	Lots	Area (has.)	TCT No.
From the former Lot 1 (subdivided under Psd-04-0262541)	1. Lot A	23.4967	67660
	2. Lot B	0.9366	67661
	3. Lot C	31.7028	67662
From the former Lot 2 (subdivided under Psd-04-0262542)	4. Lot B	9.0587	67664
	5. Lot C	0.2925	67665
	6. Lot J-7	1.2159	68223
	7. Lot J-8	1.0757	68224
	8. Lot J-9	1.2158	68225
	9. Lot J-10	1.3356	68226
	10. Lot J-11	1.0000	68227
	11. Lot J-12	1.0000	68228
	12. Lot J-13	1.4802	68229
	13. Lot J-14	2.0443	68230
	14. Lot J-15	1.8060	68231
	15. Lot J-16	2.1663	68232
	16. Lot J-17	1.5454	68233
	17. Lot J-18	1.4769	68234

The Estate of Salas claimed that the property had been reclassified as non-agricultural prior to the effectivity of Republic Act No. 6657.[76] It anchored the alleged exclusion of the 17 lots on Department of Justice Opinion No. 44, series of 1990.[77]

Department of Justice Opinion No. 44 states that the Department of Agrarian Reform's authority to approve reclassifications of agricultural lands to non-agricultural uses could be exercised only from the date of the effectivity of Republic Act No. 6657 on June 15, 1988.[78] Thus:

[76] *Rollo,* p. 11.

[77] *Id*. at 10.

[78] *Id*. at 49.

Based on the foregoing premises, we reiterate the view that with respect to conversions of agricultural lands covered by [Republic Act] No. 6657 to non-agricultural uses, the authority of [Department of Agrarian Reform] to approve such conversions may be exercised from the date of the law's effectivity on June 15, 1988. This conclusion is based on a liberal interpretation of [Republic Act] No. 6657 in the light of [Department of Agrarian Reform's] mandate and extensive coverage of the agrarian reform program.[79]

On November 21, 2002, the farmer-beneficiaries opposed the estate's petition for exemption,[80] arguing that they had already received Certificates of Land Ownership Award over the properties.[81]

To resolve the matter, the Department of Agrarian Reform Center for Land Use, Policy, Planning, and Implementation II prepared an Investigation Report, which revealed that 14 of the 17 lots were already subjected to agrarian reform and were being paid for by the farmer-beneficiaries as owners.[82] Only Lots B and C of the former Lot 1 were not covered under the Comprehensive Agrarian Reform Program, while Lot B of the former Lot 2 was pending inclusion.[83]

The Department of Agrarian Reform Center for Land Use, Policy, Planning, and Implementation II also confirmed the presence of agricultural activities in these 17 lots.[84] Thus:

2. The southern points, specifically Lot Nos. A [Psd-04-262541 of the former Lot 1], B [Psd-04-0262542 of the former Lot 2], A and J-18 [of the former Lot 2] are *planted to corn.* Most of the rest of the area have been cleared *in preparation for planting*. Patches of grass and shrubs were also noted;

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[79] *Id*.

[80] *Id*. at 89.

[81] *Id*.

[82] *Id*. at 51.

[83] *Id*. at 52.

[84] *Id*. at 51.

3. Topography is flat;

4. Land uses of adjacent areas are *agricultural* and idle agricultural;

5. A dialogue with the farmer-beneficiaries was also conducted. The result of which, among others[,] are:

a. they have been *tilling the properties for several years*;
b. they are recipients of [Certificates of Land Ownership Award]; and
c. payments of land amortization are continuously being made to the Land Bank of the Philippines.

6. Per information given by the DAR Municipal Office, with the exception of Lots B [Psd-04-0262541] and C [Psd-04-02625241] [,] which were never covered [i.e. not distributed to agrarian reform beneficiaries,] and Lot B [Psd-04-0262542] [,] the Claim Folder (CF) of which is still at the DAR Provincial Office, the rest have been distributed to beneficiaries.[85] (Emphasis supplied)

On October 15, 2003, the HLURB issued Board Resolution No. 750, stating that "[f]or Farmlot Subdivision . . . there is no change in principal use."[86]

In an Order[87] dated January 7, 2004, then Secretary of Agrarian Reform Roberto Pagdanganan granted petitioners' application for exemption of the 17 lots from the Comprehensive Agrarian Reform Program.[88] The dispositive portion read:

WHEREFORE, premises considered, the application for exemption from clearance involving the herein described parcels of land with an aggregate area of 82.8294 hectares, located at Barangays Bulacnin and Insoluban-Marawoy [sic], Lipa City[,] Batangas[,] is hereby **GRANTED** pursuant to [Department of Agrarian Reform] Administrative Order No. 6, Series of 1994. Further, petitioner is

[85] *Id*. at 51-52.

[86] *Id*. at 53.

[87] *Id*. at 86-93.

[88] *Id*. at 44.

directed to maintain in peaceful possession of the farmer-beneficiaries therein pending the payment of disturbance compensation due them.

SO ORDERED.[89]

According to respondents, they were neither informed nor furnished copies of the petitioners' application for exemption and the Regional Trial Court's January 7, 2004 Order.[90] They learned about the application for exemption[91] and the ruling on it only from concerned neighbors[92] and from Marawoy, Lipa City Municipal Agrarian Reform Office personnel,[93] who showed them a copy of the January 7, 2004 Order.[94]

Respondents moved for reconsideration on February 18, 2004.[95] They asserted that the lots were agricultural and teeming with agricultural activity, as defined under Republic Act No. 6657.[96]

On September 23, 2005, the Department of Agrarian Reform Center for Land Use, Policy, Planning, and Implementation Secretariat wrote a letter to HLURB, seeking clarification or opinion on the classification of a farmlot subdivision.[97]

On December 19, 2005, HLURB Director Atty. Cesar A. Manuel (Atty. Manuel) replied in writing to the Department of Agrarian Reform Center for Land Use, Policy, Planning, and Implementation,[98] stating that under HLURB Rules, a farmlot

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[89] *Id*. at 92.

[90] *Id*. at 111.

[91] *Id*. at 110-118.

[92] *Id*. at 111.

[93] *Id*. at 81.

[94] *Id*. at 111.

[95] *Id*. at 81.

[96] *Id*. at 45.

[97] *Id*. at 83.

[98] *Id*.

subdivision is considered within an agricultural zone.[99] Moreover, notwithstanding the reclassification, a farmlot subdivision's principal use for farming has remained.[100]

In an Order dated September 19, 2006, then Officer-In-Charge Secretary of Agrarian Reform Nasser Pangandaman granted[101] respondents' motion for reconsideration and set aside the January 7, 2004 Order. The dispositive portion read:

> **WHEREFORE**, premises considered the MOTION FOR RECONSIDERATION (MR) filed by the movant-oppositors, Mariano Cabungacal, et al, is hereby **GRANTED** SETTING ASIDE THE ORDER dated 07 January 2004 issued by then Secretary Roberto M. Pagdanganan to Mr. Augusto Salas, Jr. the CLOA holders on the area of 40.8588 hectares shall continue the maintenance of the land while the [Provincial Agrarian Reform Office] and the [Municipal Agrarian Reform Office] is directed to look into the possibility of covering the remaining portion of the subject property.
>
> **SO ORDERED.**[102]

Petitioners appealed the September 19, 2006 Order before the Office of the President.[103]

In a Decision[104] dated June 29, 2007, the Office of the President set aside the September 19, 2006 Order and reinstated the January 7, 2004 Order of the Department of Agrarian Reform.

Respondents moved for reconsideration, but this was denied on April 23, 2008.[105]

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[99] *Id*.

[100] *Id*.

[101] *Id*. at 80-85. Order penned by Officer-In-Charge Secretary Nasser C. Pangandaman.

[102] *Id*. at 84.

[103] *Id*. at 46.

[104] *Id*. at 70-76. The Decision was penned by Executive Secretary Eduardo R. Ermita of the Office of the President.

[105] *Id*. at 77. The Resolution was penned by Executive Secretary Eduardo R. Ermita of the Office of the President.

Respondents appealed before the Court of Appeals.[106] In a Decision[107] dated October 26, 2009, the Court of Appeals granted respondents' petition, reversed the June 29, 2007 Office of the President Decision, and reinstated the September 19, 2006 Department of Agrarian Reform Order.

Petitioners moved for reconsideration, which the Court of Appeals denied on March 1, 2010.[108]

Thus, on March 25, 2010, petitioners filed a Petition for Review on Certiorari[109] with this Court. The petition was granted due course.[110]

On November 9, 2010, petitioners moved for the issuance of a temporary restraining order.[111] They attached an affidavit of Gloria Linang Mantuano (Gloria) in support of their motion.[112] Based on her affidavit, Gloria was told by unnamed tenants

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[106] *Id.* at 62-69.

[107] *Id.* at 35-57. The Decision was penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Fernanda Lampas Peralta and Ramon R. Garcia of the Second Division, Court of Appeals Manila.

[108] *Id.* at 58-61. The Resolution was penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Fernanda Lampas Peralta and Ramon R. Garcia of the Former Second Division, Court of Appeals Manila.

[109] *Id.* at 3-34.

[110] On April 26, 2010, this Court required (*Rollo,* p. 105) respondents to file their Comment. On June 15, 2010, respondents filed a Motion to Admit Comment (*Rollo,* pp. 108-109) and their Comment (*Rollo,* pp. 110-118). The Office of the Solicitor General filed its Comment (*Rollo,* pp. 137-151) on July 16, 2010. In a Resolution dated July 28, 2010, this Court granted (*Rollo,* p. 126) and noted respondents' Motion to Admit Comment and their Comment. On April 18, 2010, petitioners filed a Motion for Leave to File Attached Reply (*Rollo,* pp. 155-156) and their Reply (*Rollo,* pp. 159-167). In a Resolution dated September 15, 2010, this Court noted the Office of the Solicitor General's Comment, granted petitioners' leave to file Reply, noted their Reply, dispensed with the filing of the memorandum, and gave due course to the petition (*Rollo,* p. 171).

[111] *Rollo,* pp. 175-184.

[112] *Id*. at 185-186.

that respondents and agrarian reform beneficiaries Ricardo Capuloy, Rodrigo Cabungcal, Celso Valencia, Danilo de Ocampo, and Gerardo Guerra were able to sell their lands.[113]

In a Resolution dated November 22, 2010, petitioners' prayer for a temporary restraining order was granted.[114] It stated that "[t]he consummation of acts leading to the disposition of the litigated property can make it difficult to implement this Court's decision[.]"[115]

On January 31, 2011, this Court resolved to approve the bond amounting to ₱ 2,000,000.00 and issue the temporary restraining order in favor of petitioners.[116]

On November 12, 2013, Jose C. Basconillo (Basconillo), one of the respondents, sent a letter to this Court, questioning the propriety of issuing a temporary restraining order based merely on Gloria's affidavit.[117] Casting doubt on Gloria's credibility, Basconillo said that she was not even part of the land reform beneficiaries.[118] Further, she lived in Barangay Balintawak, as stated in her *Salaysay*,[119] and not in Barangay Inosluban-Marawoy or in Barangay Buclanin, where the lots allegedly disposed of were located.

The principal issue in this case is whether the reclassification of petitioners' agricultural land as a farmlot subdivision exempts the Estate of Salas from the coverage of the Comprehensive Agrarian Reform Program under Republic Act No. 6657. Subsumed in this matter are the following issues:

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[113] *Id*. at 185.

[114] *Id*. at 191-198. The Resolution was penned by Chief Justice Renato Corona and concurred in by Associate Justices Presbitero J. Velasco Jr., Teresita J. Leonardo-De Castro, Diosdado M. Peralta, and Jose Portugal-Perez of the First Division of the Supreme Court.

[115] *Id*. at 196-197.

[116] *Id*. at 219.

[117] *Id*. at 239-246.

[118] *Id*. at 239.

[119] *Id*. at 244-245.

(a) Whether Republic Act No. 6657 covers lands classified into non-agricultural uses prior to its effectivity;

(b) Whether Salas' farmlot subdivision falls under an "agricultural land" as defined by applicable laws; and

(c) Whether the 17 lots are covered under the Comprehensive Agrarian Reform Program.

I

The 1987 Constitution mandates the just distribution of all agricultural lands, subject to the limits prescribed by Congress. Under Article II, Section 21 of the Constitution, "[t]he State shall pro-mote comprehensive rural development and agrarian reform." Article XIII, Section 4 provides that an agrarian reform program shall be carried out in the country:

> Section 4. The State shall, by law, undertake an agrarian reform program founded on the rights of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

On June 10, 1988, Republic Act No. 6657 or the Comprehensive Agrarian Reform Law was enacted to fulfill this constitutional mandate.

The Comprehensive Agrarian Reform Law covers all public and private agricultural lands, as provided in Proclamation No. 131[120] and Executive

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[120] Instituting a Comprehensive Agrarian Reform Program (1987) provides:

. . . . . .

> NOW, THEREFORE, I, CORAZON COJUANCO AQUINO, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order.

Order No. 229,[121] including other lands of the public domain suitable for agriculture, regardless of tenurial arrangement and commodity produced.[122] However, a maximum of five (5) hectares of the landowner's compact or contiguous landholdings may not be distributed to qualified beneficiaries, as it is within the landowner's rights to retain this area.[123]

The Comprehensive Agrarian Reform Program covers the following lands: (1) all alienable and disposable lands of the public domain devoted to or suitable for agriculture; (2) all lands of the public domain exceeding the total area of five hectares

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SECTION 1. *Scope*. — Comprehensive Agrarian Reform Program (CARP) is hereby instituted which shall cover, regardless of tenurial arrangement and commodity produced all public and private agricultural lands as provided in the Constitution, including whenever applicable in accordance with law, other lands of the public domain suitable to agriculture.

[121] Providing the Mechanisms for the Implementation of the Comprehensive Agrarian Reform Program (1987).

[122] Rep. Act No. 6657, Sec. 4, as amended by Rep. Act No. 9700 provides:

SEC. 4. Scope. — The Comprehensive Agrarian Reform Law of 1988 shall cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands as provided in Proclamation No. 131 and Executive Order No. 229, including other lands of the public domain suitable for agriculture: Provided, That landholdings of landowners with a total area of five (5) hectares and below shall not be covered for acquisition and distribution to qualified beneficiaries.

[123] Rep. Act No. 6657, Sec. 6-A, as amended by Rep. Act No. 9700 provides:

Section 6-A. Exception to Retention Limits. — Provincial, city and municipal government units acquiring private agricultural lands by expropriation or other modes of acquisition to be used for actual, direct and exclusive public purposes, such as roads and bridges, public markets, school sites, resettlement sites, local government facilities, public parks and barangay plazas or squares, consistent with the approved local comprehensive land use plan, shall not be subject to the five (5)-hectare retention limit under this Section and Sections 70 and 73(a) of Republic Act No. 6657, as amended: Provided, That lands subject to CARP shall first undergo the land acquisition and distribution process of the program: Provided, further, That when these lands have been subjected to expropriation, the agrarian reform beneficiaries therein shall be paid just compensation.

and below to be retained by the landowner; (3) all government-owned lands that are devoted to or suitable for agriculture; and (4) all private lands devoted to or suitable for agriculture, regardless of the agricultural products raised or can be raised on these lands.[124]

Meanwhile, Section 10 of the Comprehensive Agrarian Reform[125] provides the types of lands that are excluded therefrom:

1. Lands that are actually, directly and exclusively used for parks, wildlife, forest reserves, reforestation, fish sanctuaries and breeding grounds, and watersheds and mangoes;

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[124] Rep. Act No. 6657, Sec. 4, as amended by Rep. Act 9700 provides: Section 4. Scope.—

. . . .

More specifically, the following lands are covered by the CARP:

(a) All alienable and disposable lands of the public domain devoted to or suitable for agriculture. No reclassification of forest or mineral lands to agriculture lands shall be undertaken after the approval of this Act until Congress, taking into account ecological, development and equity considerations, shall have determined by law, the specific limits of the public domain;

(b) All lands of the public domain in excess of the specific limits as determined by Congress in the preceeding paragraph;

(c) All other lands owned by the Government devoted to or suitable for agriculture; and

(d) All private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that can be raised thereon.

[125] Rep. Act No. 6657, Sec. 10 provides:

Section 10. Exemptions and Exclusions. — Lands actually, directly and exclusively used and found to be necessary for parks, wildlife, forest reserves, reforestation, 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 the coverage of this Act.

2. Private lands that are actually, directly and exclusively used for prawn farms and fishponds;[126]
3. Lands that are actually, directly and exclusively used and found to be necessary for:
    a. National defense;
    b. School sites and campuses including experimental farm stations operated by public or private schools for educational purposes;
    c. Seeds and seedling research and pilot production center;
    d. Church sites and convents appurtenant thereto;
    e. Mosque sites and Islamic centers appurtenant thereto;
    f. Communal burial grounds and cemeteries;
    g. Penal colonies and penal farms actually worked by the inmates; and
    h. Government and private research and quarantine centers.
4. All lands where the topography is hilly, i.e. with at least eighteen percent (18%) slope and over, and are not developed for agriculture.

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[126] Provided, that said prawn farms and fishponds have not been distributed and Certificate of Land Ownership Award (CLOA) issued to agrarian reform beneficiaries under the Comprehensive Agrarian Reform Program.

In cases where the fishponds or prawn farms have been subjected to the Comprehensive Agrarian Reform Law, by voluntary offer to sell, or commercial farms deferment or notices of compulsory acquisition, a simple and absolute majority of the actual regular workers or tenants must consent to the exemption within one (1) year from the effectivity of this Act. When the workers or tenants do not agree to this exemption, the fishponds or prawn farms shall be distributed collectively to the worker-beneficiaries or tenants who shall form a cooperative or association to manage the same.

The Comprehensive Agrarian Reform Law covers all agricultural lands, save for those not used or suitable for agricultural activities.

The law defines agricultural land as "land devoted to agricultural activity . . . and not classified as mineral, forest, residential, commercial or industrial land."[127] For agricultural land to be considered devoted to an agricultural activity, there must be "cultivation of the soil, planting of crops, growing of fruit trees, raising of livestock, poultry or fish, including the harvesting of such farm products, and other farm activities and practices performed by a farmer in conjunction with such farming operations done by persons whether natural or juridical."[128]

Aside from being devoted to an agricultural activity, the land must, likewise, not have been classified as mineral, forest, residential, commercial, or industrial land. Administrative Order No. 01-90 states:

III. Coverage

Agricultural land refers to those devoted to agricultural activity as defined in [Republic Act No.] 6657 and not classified as mineral or forest by the Department of Environment and Natural Resources (DENR) and its predecessor agencies and not classified in town plans and zoning ordinances as approved by the Housing and Land Use Regulatory Board (HLURB) and its preceding authorities prior to 15 June 1988 for residential, commercial, or industrial use.

Section 65 of Republic Act No. 6657,[129] as reiterated by Administrative Order No. 01-90, states that reclassification or conversion of agricultural lands into non-agricultural lands is subject to the approval of the Department of Agrarian Reform. The law has given the Department of Agrarian Reform the power to "approve or disapprove applications for conversion. . . of

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[127] Rep. Act No. 6657, Sec. 3(c).

[128] Rep. Act No. 6657, Sec. 3(b).

[129] Rep. Act No. 6657, Sec. 65 provides:

agricultural lands into non-agricultural uses[,]"[130] such as "residential, commercial, industrial, and other land uses. . ."[131]

Before the effectivity of Republic Act No. 6657 on June 15, 1988, the Department of Agrarian Reform had no authority to approve the conversion or reclassification of agricultural lands by local governments. Under Section 3 of Republic Act No. 2264, local governments had the power to approve reclassification of agricultural lands. Municipal and city councils could adopt zoning and subdivision ordinances or regulations reclassifying agricultural lands in consultation with the National Planning Commission.[132]

The question of whether the reclassification by local governments prior to the enactment of Republic Act No. 6657 still needed the approval of the Department of Agrarian Reform was raised by then Secretary of Agrarian Reform Florencio Abad to the Department of Justice.[133] In response, then Secretary

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SECTION 65. Conversion of Lands. — After the lapse of five (5) years from its award, when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR, upon application of the beneficiary or the landowner, with due notice to the affected parties, and subject to existing laws, may authorize the reclassification or conversion of the land and its disposition: Provided, That the beneficiary shall have fully paid his obligation.

[130] DAR Adm. O. No. 01-90, II(A).

[131] DAR Adm. O. No. 01-90, II(B).

[132] Rep. Act No. 2264, Sec. 3 provides:

. . . . . .

Power to adopt zoning and planning ordinances. — Any provision of law to the contrary notwithstanding, Municipal Boards or City Councils in cities, and Municipal Councils in municipalities are hereby authorized to adopt zoning and subdivision ordinances or regulations for their respective cities and municipalities subject to the approval of the City Mayor or Municipal Mayor, as the case may be. Cities and municipalities may, however, consult the National Planning Commission on matters pertaining to planning and zoning.

[133] Sec. of Justice Op. No. 44, s. 1990, p.1.

of Justice Franklin M. Drilon issued Department of Justice Opinion No. 44 on March 16, 1990, stating that the conversion of agricultural lands covered by Republic Act No. 6657 did not need the authority of the Department of Agrarian Reform before the date of effectivity of Republic Act No. 6657 on June 15, 1988.[134] The Department of Agrarian Reform's authority to approve conversions only began on June 15, 1988.[135]

In light of Department of Justice Opinion No. 44, the Department of Agrarian Reform issued Administrative Order No. 06-94[136] to streamline the issuance of exemption clearances by the Department of Agrarian Reform. It affirms the rule that a local government reclassification before June 15, 1988 does not need the approval of the Department of Agrarian Reform.[137]

In *Natalia Realty Inc. v. Department of Agrarian Reform*,[138] lands not devoted to agricultural activity, including lands previously converted to non-agricultural use prior to the

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[134] Sec. of Justice Op. No. 44, s. 1990.

[135] Sec. of Justice Op. No. 44, s. 1990.

[136] Guidelines for the Issuance of Exemption Clearances Based on Sec. 3(c) of Republic Act No. 6657 and the Sec. of Justice Op. No. 44, s. 1990.

[137] Adm. Order No. 06-94 provides:

II.

Legal Basis

Sec. 3 (c) of RA 6657 states that agricultural lands refers to land devoted to agricultural activity as defined in this act and not classified as mineral, forest, residential, commercial or industrial land.

Department of Justice Opinion No. 44 series of 1990 has ruled that with respect to the conversion of agricultural lands covered by R.A. No. 6657 to non-agricultural uses, the authority of DAR to approve such conversion may be exercised from the date of its effectivity, on June 15, 1988. Thus, all lands that already classified as commercial, industrial or residential before 15 June 1988 no longer need any conversion clearance.

However, the reclassification of lands to non-agricultural uses shall not operate to divest tenant-farmers of their rights over lands covered by Presidential Decree No. 27, which have vested prior to June 15, 1988.

[138] *Natalia Realty, Inc. v. Department of Agrarian Reform*, 296-A Phil. 271 (1993) [Per *J*. Bellosillo, *En Banc*]. *See* also *Pasong Bayabas Farmers Association Inc. v. Court of Appeals*, 473 Phil. 64 (2004) [Per *J*. Callejo Sr., Second Division].

effectivity of Republic Act No. 6657 by government agencies other than the Department of Agrarian Reform, were declared outside the coverage of the Comprehensive Agrarian Reform Law. Thus:

> Indeed, lands not devoted to agricultural activity are outside the coverage of [Comprehensive Agrarian Reform Law]. These include lands previously converted to non-agricultural uses prior to the effectivity of [Comprehensive Agrarian Reform Law] by government agencies other than respondent [Department of Agrarian Reform]. . .
>
> . . . . . .
>
> Since the NATALIA lands were converted prior to 15 June 1988, respondent DAR is bound by such conversion. It was therefore error to include the undeveloped portions of the Antipolo Hills Subdivision within the coverage of [Comprehensive Agrarian Reform Law].[139]

II

As a general rule, agricultural lands that were reclassified as commercial, residential, or industrial by the local government, as approved by the HLURB,[140] before June 15, 1988 are excluded from the Comprehensive Agrarian Reform Program.

A farmlot is not included in any of these categories.

Respondents correctly argue that the 17 lots are still classified and devoted to agricultural uses.[141] The definition of a "farmlot subdivision" under the HLURB Rules and Regulations Implementing Farmlot Subdivision Plan (HLURB Regulations) leaves no doubt that it is an "agricultural land" as defined under Republic Act No. 3844.

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[139] *Id.* at 278-279.

[140] Before Republic Act No. 6657 took effect on June 15, 1988, the HLURB had the authority to approve a local government's reclassification of an agricultural land into non-agricultural uses (See *Pasong Bayabas Farmers Association Inc. v. Court of Appeals*, 473 Phil. 64 (2004) [Per J. Callejo Sr., Second Division]. After Republic Act No. 6657 was implemented, that authority came under the Department of Agrarian Reform (See Section 65 of Rep. Act No. 6657).

[141] *Rollo,* pp. 146-149.

Rule V, Section 18 (d) of the HLURB Regulations provides:

. . . . . .

d. A Farmlot Subdivision – is a planned community intended primarily for *intensive agricultural activities* and secondarily for housing. A planned community consists of the provision for basic utilities judicious allocation of areas, good layout based on sound planning principles. (Emphasis supplied)

Under the HLURB Regulations, a farmlot for varied farm activities, such as milking cow and raising poultry,[142] is allowed only on a "backyard scale"[143] or a small-scale operation, and not for mass production. In a farmlot for agro-industrial purposes, the maximum buildable area for food processing or preservation is limited[144] to only twenty-five percent (25%) of the total lot area.[145] Likewise, a rice mill must be less than 300 square meters in size, and must be more than one hectare away from another mill.[146]

In contrast, under Rule 2, Section 9 (G) of the HLURB Regulations, a farmlot subdivision plan for planting tree crops, mixed orchard, or diversified crops has none of these restrictions in scale, size, or use, thus recognizing a farmlot subdivision's principal use for farming.

The HLURB Regulations also provide for the minimum site criteria for a farmlot subdivision plan. First, it must be near a marketplace *where the farm produce can be utilized* and marketed. Second, it must meet the *needs of farming activities*. Third, the topography, soil, and climate must be *suited for planting crops*.[147] These highlight a farmlot subdivision's primarily agricultural nature.[148] Thus:

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[142] See HLURB Regulations, Rule II, Sec. 7 (D).

[143] HLURB Regulations, Rule II, Sec. 9 G(2) – (8).

[144] HLURB Regulations, Rule II, Sec. 9 G (7) and (7.1).

[145] HLURB Regulations, Rule II, Sec. 8 (B)(3).

[146] HLURB Regulations, Rule II, Sec. 9 G (7) and (7.1).

[147] HLURB Regulations, Rule II, Sec. 7.

[148] HLURB Regulations, Rule V, Sec. 18 (d).

SECTION 7. SITE CRITERIA. Farmlots subdivision shall conform to the following criteria:

A. Accessibility.

The site must be accessible to transportation lines. Road, railroad facilities should add to the site's proximity to market center and industries where farm produce maybe utilized.

B. Availability of Community Services and Facilities

Basic utilities like roads and water sources must be found and readily available to adequately serve the needs of the intended/prospective farm activities. Where available, subdivision development must include the provision of power lines to the farm lots.

C. Distance from the Urban Centers

Farmlot subdivisions must be away from the center of Metro Manila and/or in the fringes of the urban core of the metropolis and of cities and municipalities. However, they shall be accessible from employment centers and population centers where the products of the farmlots can be readily marketed.

D. Physical suitability of the site varies with respect to the intended farm activities within the subdivisions. Natural features considered for varied activities are slope, climate/temperature and types of soil.

Even succeeding HLURB issuances affirm the agricultural use of a farmlot subdivision.

In 2003, the HLURB declared that devoting an agricultural land into a farmlot subdivision does not change its principal use for agricultural activities.[149] HLURB Director Atty. Manuel's letter dated December 19, 2005 also confirmed that a farmlot subdivision is considered to be within an agricultural zone.[150]

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[149] HLURB Board Resolution No. 750 (2003), Liberalizing the Requirements for the Issuance of Certification of Registration and License to Sell for Farmlot Subdivisions.

[150] *Rollo,* p. 83, Department of Agrarian Reform Order dated September 19, 2006.

Moreover, HLURB Board Resolution Nos. 922-14,[151] 926-15,[152] and 921-14[153] all state that a farmlot subdivision is "primarily intended for agricultural production, with a minimum lot area of 1,000 sq.m. and with a twenty-five percent (25%) maximum allowable buildable area." HLURB Memorandum Circular No. 001-15[154] reiterates the same definition.

The records show that the 17 lots are agricultural in nature. In its Investigation Report, the Department of Agrarian Reform Center for Land Use, Policy, Planning, and Implementation II found that the lots, being flat, were suitable for cultivating crops, and had been cleared for planting, or were planted with corn.[155] The areas covered by the original TCT No. T-2807 had been tilled for several years[156] and had been found to be irrigable.[157] Even the "[l]and uses of adjacent areas are agricultural and idle agricultural" in nature.[158]

The reclassification of Salas' landholding into a farmlot subdivision, although effected before Republic Act No. 6657, has not changed the nature of these agricultural lands, the legal relationships existing over such lands, or the agricultural usability of the lands. Thus, these lots were properly subjected to compulsory coverage under the Comprehensive Agrarian Reform Law.

Invoking *Natalia Realty v. Department of Agrarian Reform,*[159] petitioners argue for the exclusion of the 17 lots.[160] They claim

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[151] HLURB Board Res. No. 922-14, Rule 1, Sec. 4(4.15).

[152] HLURB Board Res. No. 926-15, Sec. 4(4.8).

[153] HLURB Board Res. No. 921-14, Sec. 4(4.13).

[154] Section 4 (4.15).

[155] *Rollo,* p. 52.

[156] *Id*.

[157] *Id.* at 87, Department of Agrarian Reform Order dated January 7, 2004.

[158] *Rollo,* p. 52, Court of Appeals Decision.

[159] *Natalia Realty, Inc. v. Department of Agrarian Reform*, 296-A Phil. 271 (1993) [Per *J.* Bellosillo, *En Banc*].

[160] *Rollo,* pp. 26-27.

that, as in *Natalia*, a zoning ordinance prior to the effectivity of Republic Act No. 6657 prescribed the uses for the landholdings as non-agricultural; therefore, these lots are exempted from the Comprehensive Agrarian Reform Program.[161]

Petitioners cite other cases where, with the approval of HLURB, the local government converted agricultural lands into residential[162] or commercial[163] lands, or reclassified an agricultural zone into an urban zone[164] prior to June 15, 1988. Unfortunately, none of these cases applies.

For instance, *Natalia*[165] involves a land that was converted into a town site or residential land, intended for residential use. *De Guzman v. Court of Appeals*[166] involves a land that was converted into a wholesale market complex, intended for commercial use. *Agrarian Reform Beneficiaries Association v. Nicolas*[167] involves the reclassification of a farming area into an urban zone.

Meanwhile, this case involves a land that was reclassified as a "farmlot subdivision," intended for "intensive agricultural activities."[168] Likewise, located away from the city center,[169] the farmlot subdivision has not been developed into an urban zone.

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[161] *Id.*

[162] *Junio v. Garilao*, 503 Phil. 154 (2005) [Per J. Panganiban, Third Division]; *Pasong Bayabas Farmers Association Inc. v. Court of Appeals*, 473 Phil. 64 (2004) [Per J. Callejo Sr., Second Division].

[163] *De Guzman v. Court of Appeals*, 535 Phil. 248 (2006) [Per J. Tinga, Third Division].

[164] *Agrarian Reform Beneficiaries Association v. Nicolas*, 588 Phil. 827 (2008) [Per J. Reyes, R.T., Third Division].

[165] 296-A Phil. 271 (1993) [Per J. Bellosillo, *En Banc*].

[166] 535 Phil. 248 (2006) [Per J. Tinga, Third Division].

[167] 588 Phil. 827-844 (2008) [Per J. Reyes, R.T., Third Division].

[168] HLURB Regulations, Rule V, Sec. 18(d).

[169] HLURB Regulations , Rule II, Sec. 7(c).

When Salas' agricultural land was reclassified as a farmlot subdivision, the applicable law was Republic Act No. 3844, as amended.[170]

Republic Act No. 3844, sought "to make the small farmers more independent, self-reliant and responsible citizens, and a source of genuine strength in our democratic society."[171] Thus, Republic Act No. 3844 established the Land Authority[172] to initiate proceedings for the acquisition of private agricultural lands,[173] and the subdivision of these lands into economic family-size farm units for resale to bona fide tenants, occupants, and qualified farmers.[174]

Section 166 (1) of Republic Act No. 3844 defined an agricultural land as "*land devoted to any growth*, including but not limited to crop lands[.]"[175] The law neither made reference to a "farmlot subdivision," nor did it exclude a farmlot from the definition of an agricultural land.

Not being excluded, Salas' landholdings were thus contemplated in the definition of an agricultural land under Republic Act No. 3844.

Likewise, Republic Act No. 6657 does not exclude a farmlot subdivision from the definition of an agricultural land. Section 3(c) of Republic Act No. 6657 states that agricultural lands refer to "land devoted to agricultural activity . . . and not classified as mineral, forest, residential, commercial, or industrial land." Section 76 expressly provides that any other definition inconsistent with Republic Act No. 6657 has been repealed by this law.[176]

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[170] Agricultural Land Reform Code (1963).

[171] Rep. Act No. 3844, Sec. 2(6).

[172] Rep. Act No. 3844, Sec. 49.

[173] Rep. Act No. 3844, Sec. 51(1) in relation to Sec. 166.

[174] Rep. Act No. 3844, Sec. 51(1).

[175] Emphasis supplied.

[176] Rep. Act No. 3844, Sec. 76.

III

Insisting on the exclusion of the 17 lots from the Comprehensive Agrarian Reform Program, petitioners rely on the definition of an agricultural land under the HLURB Regulations. Rule V, Section 18 (e) states that agricultural lands are "parcels of land ranging from 0.2 to 50 or more hectares. . .exclusively or predominantly used for cultivation, livestock production and agro-forestry without the intended qualities of the farmlot subdivision."

A farmlot subdivision has the following intended qualities under the HLURB Regulations: it is a planned community primarily for intensive agricultural activities, and secondarily for housing.[177]

Petitioners argue that, to be considered an agricultural land, the property must be used exclusively for agricultural purposes and cannot be used secondarily for housing.[178] Since the reclassification as a farmlot subdivision rendered the lots no longer exclusively for agricultural purposes, then these lots ceased to be agricultural land.[179]

Petitioners are mistaken.

First, an executive regulation cannot go beyond the law.[180] Republic Act No. 3844 (1963) broadly defined an agricultural land as "land devoted to any growth, including but not limited to crop lands."[181] Republic Act No. 6657, as amended, also broadly defines agricultural land as land devoted to agricultural activity.[182] In contrast, the HLURB Regulations restrict the

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[177] HLURB Regulations, Rule V, Sec. 18(d).

[178] *Rollo,* p. 29.

[179] *Id*.

[180] *Lokin, Jr. v. Commission on Elections*, 635 Phil. 372, 392 (2010) [Per *J*. Bersamin, *En Banc*].

[181] Rep. Act No. 6657, Sec.166 (1).

[182] Rep. Act No. 6657, Sec. 3(c).

definition of agricultural lands to those lands "exclusively or predominantly used for cultivation," not being a farmlot subdivision.[183]

In limiting the definition of an agricultural land to one "without the intended qualities of a farmlot subdivision," the HLURB Regulations are overriding, supplanting, and modifying a statutory definition. This is prohibited. A mere executive issuance cannot alter, expand, or restrict the provisions of the law it seeks to enforce.[184]

It bears stressing that neither Republic Act No. 3844 nor Republic Act No. 6657 excludes a farmlot subdivision, which is primarily agricultural in nature, from the definition of an agricultural land.

Second, in case of doubt, any other definition of an agricultural land inconsistent with the law, such as that found under the HLURB Regulations, has been expressly[185] repealed by Section 76 of Republic Act No. 6657.

Republic Act No. 6657 never required that a landholding must be exclusively used for agricultural purposes to be covered by the Comprehensive Agrarian Reform Program. What determines a tract of land's inclusion in the program is its suitability for any agricultural activity.

The Department of Agrarian Reform Administrative Order No. 01-90 (Revised Rules and Regulations Governing Conversion of Private Agricultural Lands to Non-Agricultural Uses) defines agricultural land as follows:

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[183] HLURB Regulations, Rule V, Sec. 18 (e)

[184] *Lokin, Jr. v. Commission on Elections*, 635 Phil. 372, 392 (2010) [Per *J*. Bersamin, *En Banc*].

[185] Rep. Act No. 6657, Sec. 76 provides:

Section 76. *Repealing Clause*. — Section 35 of Republic Act No. 3834, Presidential Decree No. 316, the last two paragraphs of Section 12 of Presidential Decree No. 946, Presidential Decree No. 1038, and all other laws, decrees executive orders, rules and regulations, issuances or parts thereof inconsistent with this Act are hereby repealed or amended accordingly.

III. Coverage

Agricultural land refers to those devoted to agricultural activity as defined in [Republic Act No.] 6657 and not classified as mineral or forest by the Department of Environment and Natural Resources (DENR) and its predecessor agencies and not classified in town plans and zoning ordinances as approved by the Housing and Land Use Regulatory Board (HLURB) and its preceding authorities prior to 15 June 1988 for residential, commercial, or industrial use.

We parse this definition into its three elements. Agricultural lands consist of lands:

(1) Devoted to agricultural activity, as defined in Republic Act No. 6657;

(2) Not classified as mineral or forest by the Department of Environment and Natural Resources; and

(3) Prior to June 15, 1988, not classified for residential, commercial, or industrial use under a local government town plan and zoning ordinance, as approved by the HLURB (or its predecessors, the National Coordinating Council and the Human Settlements Regulatory Commission).

Salas' farmlot subdivision fulfills these elements.

For the first element, the lots are devoted to agricultural activity.

Agricultural activity refers to the "cultivation of the soil, planting of crops, growing of fruit trees, raising of livestock, poultry or fish, including the harvesting of such farm products, and other farm activities and practices performed by a farmer in conjunction with such farming operations done by persons whether natural or juridical."[186]

Petitioners never denied the continued existence of agricultural activity within these lots.[187]

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[186] Rep. Act No. 6657, Sec. 3(b).

[187] *Rollo,* p. 51.

Moreover, the Department of Agrarian Reform Center for Land Use, Policy, Planning, and Implementation II, as affirmed by the Court of Appeals, found that the estate's landholdings have been used for agricultural purposes.[188]

In issuing a Notice of Coverage and Notice of Valuation to the Estate of Salas,[189] the Municipal Agrarian Reform Office also found that the lots are for agricultural use, and therefore, covered under the Comprehensive Agrarian Reform Program.[190] The awarding of the lands[191] to the agrarian reform beneficiaries bolsters the agricultural activity present in them.

For the second element, it is undisputed that the lots have not been declared as mineral or forest lands by the Department of Environment and Natural Resources. No application has been filed to declare the landholdings as mineral or forest lands, and neither has the Department of Environment and Natural Resources ever declared the properties as such.

As to the third element, the lands were not classified by the Lipa City Town Plan/Zoning Ordinance as commercial, residential, or industrial lands prior to June 15, 1988. Rather, the reclassification, which was approved by HLURB's predecessor agency, was that of a "farmlot subdivision."[192]

Section 4 (d) of Republic Act No. 6657 covers "[a]ll private lands devoted to or suitable for agriculture[,] regardless of the agricultural products raised or that can be raised thereon." As the estate's private lands are (a) devoted to or suitable for agriculture; and (b) not classified as mineral, forest, residential, commercial, or industrial, then these may be included in the Comprehensive Agrarian Reform Program.

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[188] *Id*.

[189] *Id*. at 54.

[190] DAR Adm. O. No. 01-03 (2003).

[191] *Rollo,* p. 51.

[192] *Id*. at 48. As shown in the HLURB Board Secretariat Officer-in-Charge Carolina Casaje's Certification dated May 5, 1997 and HLURB City Planning and Development Coordinator Dante Villanueva's Certification dated October 5, 1998.

Finally, whenever there is reasonable uncertainty in the interpretation of the law, the balance must be tilted in favor of the poor and underprivileged.[193]

Republic Act No. 6657 was enacted as social legislation, pursuant to the policy of the State to pursue a Comprehensive Agrarian Reform Program.[194] Agrarian reform is the means towards a viable livelihood and, ultimately, a decent life for the landless farmers.

In *Perez-Rosario v. Court of Appeals*:[195]

> Agrarian reform is a perceived solution to social instability. The edicts of social justice found in the Constitution and the public policies that underwrite them, the extraordinary national experience, and the prevailing national consciousness, all command the great departments of government to tilt the balance in favor of the poor and underprivileged whenever reasonable doubt arises in the interpretation of the law. But annexed to the great and sacred charge of protecting the weak is the diametric function to put every effort to arrive at an *equitable solution for all parties concerned*: the jural postulates of social justice cannot shield illegal acts, nor do they sanction false sympathy towards a certain class, nor yet should they deny justice to the landowner whenever truth and justice happen to be on her side. In the occupation of the legal questions in all agrarian disputes whose outcomes can significantly affect societal harmony, the considerations of social advantage must be weighed, an inquiry into the prevailing social interests is necessary in the adjustment of conflicting demands and expectations of the people, and the social interdependence of these interests, recognized.[196]
> (Emphasis supplied, citations omitted)

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[193] *Perez-Rosario v. Court of Appeals*, 526 Phil. 562, 586 (2006) [Per *J.* Martinez, First Division].

[194] *Remman Enterprises, Inc. v. Court of Appeals*, 534 Phil. 496, 516-517 (2006) [Per *J.* Chico-Nazario, First Division].

[195] *Perez-Rosario v. Court of Appeals*, 526 Phil. 562 (2006) [Per *J.* Martinez, First Division].

[196] *Id.* at 586.

The general policy of Republic Act No. 6657 is to cover as many lands suitable for agricultural activities as may be allowed.[197]

Where there is doubt as to the intention of the local government in the area where the property is located, the interpretation should be towards the declared intention of the law.

WHEREFORE, the petition filed by Heirs of Augusto Salas, Jr. is **DENIED**, and the Decision of the Court of Appeals Second Division, Manila, promulgated on October 26, 2009 in CA-G.R. SP No. 103703, is **AFFIRMED**.

The temporary restraining order dated January 31, 2011 is **PERMANENTLY LIFTED**.

SO ORDERED.

Carpio (*Chairperson*), *Jardeleza,* and *Martires, JJ.,* concur.

Mendoza, *J.*, on official leave.

FIRST DIVISION

[G.R. No. 192345. March 29, 2017]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **SPOUSES ESTEBAN and CRESENCIA CHU,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTIONS; MISAPPREHENSION OF FACTS.— Under Rule 45 of the Rules of Court, only questions of law may be raised as this Court is not a trier of facts; it is not our function to re-examine

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[197] DAR Adm. O. No. 01-90, Part IV.

and weigh anew the evidence of the parties. This Court shall examine or evaluate the evidence again only in the exercise of its discretion and for compelling reasons, as when the judgment is based on a misapprehension of facts and when the findings of fact are conflicting.

2. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (RA 6657); JUST COMPENSATION FOR AGRARIAN REFORM CASES; CONSIDERATION OF THE VALUATION FACTORS UNDER SECTION 17 OF RA 6657 AND THE FORMULA UNDER DAR A.O. 05-98 IS MANDATORY.— The LBP correctly argued that consideration of the valuation factors under Section 17 of RA 6657 and the formula under DAR A.O. No. 05-98 is mandatory in ascertaining just compensation for purposes of agrarian reform cases. In *Land Bank of the Philippines v. Gonzalez*, we held that although the determination of just compensation is fundamentally a judicial function vested in the RTC, the judge must still exercise his discretion within the bounds of law. He ought to take into *full consideration* the factors specifically identified in RA 6657 and its implementing rules, as contained under the pertinent Administrative Orders of the DAR, such as DAR A.O. No. 05-98, which contains the basic formula of the factors enumerated under said law. He may not disregard the procedure laid down therein because unless an administrative order is declared invalid courts have no option but to apply it. Otherwise, the judge runs the risk of violating the agrarian reform law should he choose not to use the formula laid down by the DAR for the determination of just compensation.

3. ID.; ID.; ID.; NO INCREMENTAL, COMPOUNDED INTEREST OF SIX PERCENT (6%) *PER ANNUM* SHALL BE ASSESSED; INTEREST MAY BE AWARDED IN CASE OF DELAY IN THE PAYMENT OF JUST COMPENSATION.— In *Land Bank of the Philippines v. Spouses Chico*, we held that "when just compensation is determined under R.A. No. 6657, no incremental, compounded interest of six percent (6%) *per annum* shall be assessed x x x as the same applies only to lands taken under P.D. No. 27 and E.O. No. 228, pursuant to DAR A.O. No. [13-94], x x x and not Sec. 26 of R.A. No. 6657 x x x." x x x If upon remand of this case the LBP is found to be in delay in the payment of justcompensation, then it is bound to pay interest.

APPEARANCES OF COUNSEL

LBP Legal Service Groups, CARP Legal Services Department for petitioner.

Belarmino Law Office for private respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Petitioner Land Bank of the Philippines (LBP) is assailing the January 18, 2010 Decision[1] of the Court of Appeals (CA) in CA G.R. SP No. 93518 over the amount of just compensation awarded to respondents Esteban and Cresencia Chu, as well as its May 24, 2010 Resolution[2] which denied LBP's Motion for Reconsideration of the said Decision.

Factual Antecedents

Respondents were the registered owners of two parcels of agricultural land located in San Antonio, Pilar, Sorsogon which were acquired by the government pursuant to its agrarian reform program.[3] The first parcel of land covered by Transfer Certificate of Title (TCT) Nos. T-27060 and 27062 and with an area of 14.9493 hectares (14.9493 has.) was acquired under Presidential Decree No. 27[4] (PD 27-acquired land) and initially valued by the LBP at ₱177,657.98.[5] The second parcel of land covered by TCT No. T-27060 (pt.) was acquired under Republic Act

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[1] *Rollo*, pp. 45-55; penned by Associate Justice Mario L. Guariña III and concurred in by Associate Justices Sesinando E. Villon and Franchito N. Diamante.

[2] *Id*. at 56.

[3] *Id*. at 45.

[4] Entitled "Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanism Therefor," October 21, 1972.

[5] *Rollo*, p. 46.

No. 6657[6] (RA 6657-acquired property) and has an area of 7.7118 hectares (7.7118 has.). LBP valued the same at ₱263,928.57.[7]

Respondents rejected LBP's valuation; hence summary administrative proceedings were conducted before the Provincial Agrarian Reform Adjudication Board (PARAD) to determine the just compensation. The administrative proceedings were docketed as Land Valuation Case No. LV-30-'03 for the RA 6657-acquired property and Land Valuation Case No. LV-48-'03 for the PD 27-acquired land.

Ruling of the Provincial Agrarian Reform Adjudicator

On April 11, 2003, the PARAD issued two separate Decisions[8] recomputing the valuations arrived at by the LBP. The PARAD recomputed the value of the RA 6657-acquired property at ₱1,542,360.00 (or ₱200,000.00/ha.) based on the comparable sales transaction of similar nearby lots as well as Municipal Resolution No. 79, series of 2002, declaring Hacienda Chu as industrial area. In addition, it considered the subject property's good production, topography, and accessibility. As regards the PD 27-acquired land, the PARAD valued the subject property at ₱983,663.94 using the formula: Land Value = AGP x ASP x 2.5 (or Average Gross Production of 75.2 x Actual Support Price of ₱350.00 x 2.5).

LBP's Motion for Reconsideration was denied by the DARAB in its June 19, 2003 Order.[9]

Ruling of the Regional Trial Court (RTC) as Special Agrarian Court (SAC)

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[6] The Comprehensive Agrarian Reform Law of 1988, June 10, 1988.

[7] *Rollo*, p. 46.

[8] *Id*. at 152-154; 155-157; penned by Provincial Agrarian Reform Adjudicator Manuel M. Capellan.

[9] As stated in the Decision of the Regional Trial Court, *id*. at 124. The records of the case, however, do not include a copy of LBP's Motion for Reconsideration filed in, and the June 19, 2003 Order of, the DARAB.

Dissatisfied, LBP filed a Petition for Determination of Just Compensation before the RTC of Sorsogon City, Branch 52, docketed as Civil Case No. 2003-7205.[10]

In its September 21, 2005 Decision,[11] the RTC fixed the just compensation at ₱2,313,478.00 for the RA 6657-acquired property and ₱1,155,173.00 for the PD 27-acquired land.[12]

In arriving at these amounts, the RTC took cognizance of the factors considered by the LBP and the PARAD. In addition, it considered the "potentials" of the subject properties, to wit:

> The Court considers the decision of the Provincial Adjudicator of Sorsogon, the testimony of the witnesses presented by the Private Respondent namely the Secretary of the Sangguniang Bayan and the Municipal Assessor of the Municipality of Pilar, Sorsogon who testified on the Municipal Ordinance/Resolution specifically declaring x x x the land of the private respondents including the subject landholding x x x is the subject [of] Municipal Expansion for Agri-Economic Cum Industrial Area. The Court also consider[ed] the applicable law and jurisprudence on the matter in arriving [at] the just compensation of the subject property. The Court further consider[ed] the present economic condition of the country as well as the present assessed value of the acquired property. The subject property is very near the industrial center that was planned by the local government thus transforming the area adjacent to the acquired property into an economic hub of the province of Sorsogon partly thru industrial program, eco-tourism development and agricultural productivity into an Agri-Economic Zone to serve as the backbone of a comprehensive and sustainable program of community[;] thus it will provide enormous livelihood opportunities and tremendous economic multiplier effect not only for residents of barangay San Antonio (Sapa) but also for the entire citizenry of Pilar, Sorsogon.
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> According to the answer filed by the private respondents, the property is fully planted to coconut (TCT-T-27060) and only more or less 20 meters away from the provincial road and is more or less

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[10] *Id*. at 158-160.

[11] *Id*. at 123-127; penned by Judge Honesto A. Villamor.

[12] *Id*. at 126.

half [a] kilometer away from the barangay poblacion. These characteristics are likewise true [for] TCT No. T-27062. That the area covered under P.D. 27 yields an average of 73 sacks of clean palay per harvest while that covered under R.A. 6657 x x x yields an average of 10 nuts per tree every 45 days at 110 fruit[-]bearing trees per hectare. For all the foregoing potentials of the property, the Court not only took into consideration the amount of just compensation fixed by the Provincial Adjudicator of Sorsogon but further took into account such potentials of the acquired property which can command a price of not less than ₱100,000.00 per hectare. The Provincial Adjudicator valued the 7.7118 hectares acquired under TCT No. T-27060 [at] ₱1,542,360.00 under R.A. 6657 while that portion acquired inside the property titled under TCT No. T-27062 [at] ₱983,663.94 under P.D. 27 and considering the potentials of the land in terms of the enormous livelihood opportunities and tremendous economic multiplier effect not only for the residents of [B]arangay San Antonio but also the entire municipality of Pilar, Sorsogon, the Court further valued the acquired property in the amount of ₱100,000.00 per hectare. Adding the value of the land in terms of the fair market value as determined by the Provincial Adjudicator of Sorsogon, which includes the value of the actual production of the coconut trees and the palay produced, to wit: ₱1,542,360.00 and ₱983,663.94 respectively and the potentials of the property [at] ₱100,000.00 per hectare or the value of ₱771,118.00 for the 7.7118 hectares and ₱171,510.00 for the 1.7151 hectares, we get the total of ₱2,313,478.00 as just compensation for the 7.7118 hectares and the just compensation in the amount of ₱1,155,173.94 for the 1.7151 hectares.[13]

The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered:

1) Fixing the amount of TWO MILLION THREE HUNDRED THIRTEEN THOUSAND FOUR HUNDRED SEVENTY EIGHT (₱2,313,478.00)[14] Pesos, Philippine Currency for the 7.7118[15] hectares

[13] *Id*. at 125-126.

[14] Applying the formula as provided by the RTC, the correct amount should have been ₱2,313,540.00.

[15] The amount of ₱100,000.00 per hectare multiplied by 7.7118 has. was added to the PARAD's valuation of ₱1,542,360.00 for the RA 6657-acquired property.

and the amount of ONE MILLION ONE HUNDRED FIFTY FIVE THOUSAND AND ONE HUNDRED SEVENTY THREE (₱1,155,173.00) Pesos, Philippine currency for the 1.7151 hectares,[16] to be the just compensation of said acquired portions which agricultural land are situated [in] San Antonio (Sapa) Pilar, Sorsogon, covered by TCT No. T-27060 and TCT No. T-27062 in the name of the Sps. Esteban and Cresencia Chu, which property was taken by the government pursuant to the Agrarian Reform Program provided by R.A. 6657.

2) Ordering the Petitioner Land Bank of the Philippines to pay the Private Respondents the total amount of just compensation in the sum of THREE MILLION FOUR HUNDRED SIXTY EIGHT THOUSAND AND SIX HUNDRED FIFTY ONE (₱3,468,651.00) Pesos, Philippine currency, in the manner provided by R.A. No. 6657 by way of full payment of the said just compensation after deducting whatever amount previously received by the Private Respondents from the Petitioner Land Bank as part of the just compensation.

3) Ordering the Private Respondents to pay whatever deficiency in the docket fees to the Clerk of Court based on the valuation fixed by the Court.

4) Without pronouncement as to cost.

SO ORDERED.[17]

LBP's motion for reconsideration[18] was denied by the RTC in its Order[19] dated February 13, 2006.

Ruling of the Court of Appeals

On appeal, the CA modified the RTC's ruling. The CA noted that the formula used by the PARAD (*i.e.*, LV = AGP x ASP

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[16] The amount of ₱100,000.00 per hectare multiplied by 1.7151 has. was added to the PARAD's valuation of ₱983,663.94 for the PD 27-acquired land. However, this valuation is erroneous as it indicates the acquired area to be 1.7151 has. when the same actually measures 14.9493 has.

[17] *Rollo*, pp. 126-127.

[18] *Id*. at 129-133.

[19] *Id*. at 128.

x 2.5) in computing the valuation for the PD 27-acquired land is correct. However, the amount used for the ASP, which is ₱350, is erroneous. According to the CA, the mandated ASP in Executive Order No. 228[20] (EO 228) is only ₱35, not ₱350, pursuant to our ruling in *Gabatin v. Land Bank of the Philippines*.[21] Moreover, the CA opined that this formula remains applicable to PD 27-acquired lands notwithstanding the passage of RA 6657, citing as basis EO 229.[22] In addition, interest at the rate of 12% *per annum* must be imposed to compensate for the delay. Accordingly, it upheld LBP's valuation for the PD 27-acquired land at ₱177,657.98 but awarded legal interest at the rate of 12% *per annum*.[23]

On the other hand, for the property acquired under RA 6657, the CA opined that Section 17 thereof, as well as Department of Agrarian Reform Administrative Order No. 5,[24] series of 1998 (DAR A.O. 05-98), must be considered in fixing just

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[20] *Id*. at 51.

Entitled "Declaring Full Land Ownership to Qualified Farmer-Beneficiaries Covered by Presidential Decree No. 27; Determining the Value of Remaining Unvalued Rice and Corn Lands Subject to Presidential Decree No. 27; and Providing for the Manner of Payment by the Farmer-Beneficiary and Mode of Compensation to the Landowner," July 17, 1987.

It bears mentioning that the CA noted that the PARAD used the symbol ASP, instead of GSP. Per the appellate court:

"The symbol we are aware of is GSP which[,] under EO 228, is *government support price*. We suppose that the figure 350 used by the Provincial Adjudicator stands for an *actual support price* at the time of the fixing of just compensation. See Hernandez, Alba and Hernandez, Landowners' Rights under the Agrarian Reform Program, 2004, at 184, citing *Galleon v. Pastoral* CA-G.R. No. 23168. The ASP is not mentioned in Executive Order No. 228." *Rollo*, p. 46.

[21] 486 Phil. 366, 384 (2004).

[22] Entitled "Providing the Mechanisms for the Implementation of the Comprehensive Agrarian Reform Program," July 22, 1987.

[23] *Rollo*, p. 51.

[24] The "Revised Rules and Regulations Governing the Valuation of Lands Voluntarily Offered or Compulsorily Acquired Pursuant to Republic Act No. 6657," April 15, 1998.

determination. As such, the formula to be used is LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1) where LV is land value; CNI is capitalized net income; CS is comparable sales; and, MV is market value per tax declaration. The alternative formula of LV = (CNI x 0.9) + (MV x 0.1) may be used if the CS factor is not present. The CA found that although the LBP used this formula, it, however, failed to consider the rising values of the lands in Pilar, Sorsogon which resulted from the economic developments mentioned in the municipal resolution and the current assessment of industrial lands in the area – this, despite the fact that evidence was presented to show that comparable sales (the CS in the formula) have gone up to at least ₱200,000.00 per hectare. Thus, it affirmed the estimate that the RA 6657-acquired property may be priced at ₱200,000.00 per hectare as fixed by the PARAD.[25]

The CA disposed of the case, thus:

IN VIEW OF THE FOREGOING, the RTC decision dated September 21, 2005 is modified in that:

1) Just compensation for the PD 27-acquired property of 14.9493 hectares shall be ₱177,657.98 with interest of 12 percent *per annum* from November 1994 until paid, and

2) Just compensation for the RA 6657-acquired property of 7.7118 hectares shall be computed at ₱200,000 per hectare, or ₱1,542,360.

The petitioner is ordered to pay the respondents the amounts as set forth herein. All other aspects of the decision stand.

SO ORDERED.[26]

The LBP filed a Motion for Reconsideration[27] which was denied by the appellate court in its Resolution dated May 24, 2010.

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[25] *Rollo*, pp. 53-54.

[26] *Id*. at 54-55.

[27] *Id*. at 57-72.

Thus, the present Petition for Review on *Certiorari*.

Issues

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW WHEN:

A.

INSOFAR AS THE RA 6657-ACQUIRED LAND, IT DISREGARDED THE VALUATION FACTORS UNDER SECTION 17 OF RA 6657 AND THE PERTINENT DAR ADMINISTRATIVE ORDERS IN FIXING ITS VALUE AT ₱1,542,360.00.

B.

INSOFAR AS THE PD 27-ACQUIRED LAND, IT REFUSED TO REMAND THE INSTANT CASE TO THE TRIAL COURT FOR A RECOMPUTATION OF ITS VALUE PURSUANT TO SECTION 17 OF RA 6657, AS AMENDED.

C.

IT IMPOSED THE PAYMENT OF INTEREST AT 12% *PER ANNUM* ON THE VALUE OF THE PD 27-ACQUIRED LAND.[28]

LBP's Argument

The LBP posits that the appellate court improperly relied on extraneous factors, such as the rising value of the lands in Pilar, Sorsogon, potentials of the subject property considering its strategic location, livelihood opportunities and economic multiplier effect to the community, in determining the just compensation for the subject properties. The LBP insists on the mandatory application of RA 6657 *vis-à-vis* the formula provided in DAR A.O. No. 05-98.

Likewise, the LBP avers that the computation of the just compensation for the PD 27-acquired land must be revised in view of the enactment of RA 9700.[29] In particular, Section 5 thereof

[28] *Id.* at 22-23.

[29] Entitled "An Act Strengthening the Comprehensive Agrarian Reform Program (CARP), Extending the Acquisition and Distribution of All Agricultural Lands, Instituting Necessary Reforms, Amending for the Purpose Certain Provisions of Republic Act No. 6657, Otherwise Known as The Comprehensive Agrarian Reform Law of 1988, as amended, and Appropriating Funds Therefor," August 7, 2009.

provides that *all* previously acquired lands, the valuation of which is subject to challenge by the landowners, shall be completed and finally resolved pursuant to Section 17 of RA 6657, as amended. LBP posits that the contested valuation of the PD 27-acquired land, should now be computed in accordance with Section 17 of RA 6657, as amended; hence, the need to remand the case to the RTC for a re-computation of its value.

Lastly, the LBP contends that the CA's award of 12% interest *per annum* is without basis. It posits that with the enactment of RA 9700 *vis-à-vis* RA 6657, interest should no longer be imposed since the valuation of the PD 27-acquired land would no longer be pegged at 1972 prices but would be brought to current values pursuant to Section 5 of RA 9700 in relation to Section 17 of RA 6657, as amended, *vis-à-vis* DAR A.O. Nos. 02-09[30] and 01-10.[31]

Respondents did not file a comment to the Petition and were deemed to have waived the filing thereof.[32]

Our Ruling

We grant the Petition in part.

Only questions of law may be raised in a Petition for Review Under Rule 45, exceptions thereto

Under Rule 45 of the Rules of Court, only questions of law may be raised as this Court is not a trier of facts; it is not our function to re-examine and weigh anew the evidence of the parties. This Court shall examine or evaluate the evidence again only in the exercise of its discretion and for compelling reasons,[33] as when

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[30] The "Rules and Procedures Governing the Acquisition and Distribution of Agricultural Lands Under Republic Act No. 6657, as amended by Republic Act No. 9700," October 15, 2009.

[31] The "Rules and Regulations on Valuation and Landowners' Compensation Involving Tenanted Rice and Corn Lands Under Presidential Decree No. 27 and Executive Order No. 228," February 12, 2010.

[32] See Resolution of January 16, 2013, *rollo*, p. 278.

[33] *Land Bank of the Philippines v. Spouses Chico*, 600 Phil. 272, 285 (2009).

the judgment is based on a misapprehension of facts and when the findings of fact are conflicting.[34] Here, we find that the judgment arrived at by the PARAD and the RTC, which rulings were subsequently affirmed *in toto* and with modifications, respectively, by the CA, as to the RA 6657-acquired property, was to some extent based on a misapprehension or erroneous appreciation of facts. As regards the PARAD's and the CA's ruling, on one hand, and the RTC's on the other, on the PD 27-acquired land, their findings thereon are conflicting. Additionally, the PARAD's and the CA's reliance on PD 27 and its implementing rules, which formed the basis of their respective Decisions, are now inapplicable thereto.

RA 6657-acquired property

The LBP correctly argued that consideration of the valuation factors under Section 17 of RA 6657 and the formula under DAR A.O. No. 05-98[35] is mandatory in ascertaining just compensation for purposes of agrarian reform cases. In *Land Bank of the Philippines v. Gonzalez*,[36] we held that although the determination of just compensation is fundamentally a judicial function vested in the RTC, the judge must still exercise his discretion within the bounds of law. He ought to take into *full consideration* the factors specifically identified in RA 6657 and its implementing rules, as contained under the pertinent Administrative Orders of the DAR, such as DAR A.O. No. 05-98, which contains the

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[34] *Special People, Inc. Foundation v. Canda,* G.R. No. 160932, January 14, 2013, 688 SCRA 403, 413.

[35] Despite the enactment of Republic Act No. 9700, which shall be discussed in detail *vis-à-vis* the valuation of the PD 27-acquired land subject of this Petition, Section 17 of Republic Act No. 6657, in relation to DAR A.O. No. 05-98, shall apply here in view of the provision contained in Republic Act No. 9700 itself which states that "all previously acquired lands wherein valuation is subject to challenge by landowners shall be completed and finally resolved pursuant to Section 17 of Republic Act No. 6657, as amended." As such, the Republic Act No. 6657-acquired property in this case, which has already been acquired by the DAR but remains unpaid, shall be computed and finally resolved pursuant to Section 17 of Republic Act No. 6657, as amended.

[36] G.R. No. 185821, June 13, 2013, 698 SCRA 400, 413-414.

basic formula of the factors enumerated under said law. He may not disregard the procedure laid down therein because unless an administrative order is declared invalid courts have no option but to apply it. Otherwise, the judge runs the risk of violating the agrarian reform law should he choose not to use the formula laid down by the DAR for the determination of just compensation. The Court reaffirmed this established jurisprudential rule in *Alfonso v. Land Bank of the Philippines*[37] when it categorically gave "full constitutional presumptive weight and credit to Section 17 of RA 6657, DAR AO No. 5 (1998) and the resulting DAR basic formulas."[38]

The Court then made the following pronouncement:

> For clarity, we restate the body of rules as follows: The factors listed under Section 17 of RA 6657 and its resulting formulas provide a uniform framework or structure for the computation of just compensation which ensures that the amounts to be paid to affected landowners are not arbitrary, absurd or even contradictory to the objectives of agrarian reform. Until and unless declared invalid in a proper case, the DAR formulas partake of the nature of statutes, which under the 2009 amendment became law itself, and thus have in their favor the presumption of legality, such that courts shall consider, and not disregard, these formulas in the determination of just compensation for properties covered by the CARP. When faced with situations which do not warrant the formula's strict application, courts may, in the exercise of their judicial discretion, relax the formula's application to fit the factual situations before them, subject only to the condition that they clearly explain in their Decision their reasons (as borne by the evidence on record) for the deviation undertaken. It is thus entirely allowable for a court to allow a landowner's claim for an amount higher than what would otherwise have been offered (based on an application of the formula) for as long as there is evidence on record sufficient to support the award.
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> x x x x x x x x x
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> For the guidance of the bench, the bar, and the public, we reiterate the rule: Out of regard for the DAR's expertise as the concerned

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[37] G.R. Nos. 181912 & 183347, November 26, 2016.

[38] *Id*.

implementing agency, courts should henceforth consider the factors stated in Section 17 of RA 6657, as amended, as translated into the applicable DAR formulas in their determination of just compensation for the properties covered by the said law. If, in the exercise of their judicial discretion, courts find that a strict application of said formulas is not warranted under the specific circumstances of the case before them, they may deviate or depart therefrom provided that this departure or deviation is supported by a reasoned explanation grounded on the evidence on record. In other words, courts of law possess the power to make a final determination of just compensation.[39]

Be that as it may, we cannot sustain LBP's valuation of ₱263,928.57 as just compensation for the RA 6657-acquired property for failure to substantiate the same.

In *Land Bank of the Philippines v. Livioco,*[40] we held that "in determining just compensation, LBP must substantiate its valuation." This pronouncement is a reiteration of our ruling in *Land Bank of the Philippines v. Luciano*[41] that:

> Clearly, Land Bank's valuation of lands covered by CARL is considered only as an initial determination, which is not conclusive, as it is the RTC, sitting as a [SAC], that should make the final determination of just compensation, taking into consideration the factors enumerated in Section 17 of RA 6657 and the applicable DAR regulations. **Land Bank's valuation had to be substantiated during the hearing before it could be considered sufficient in accordance with Section 17 of RA No. 6657** and DAR AO No. x x x (Emphasis supplied)

In this case, we hold that the LBP was not able to justify its valuation. Although the LBP maintained that it stringently applied the pertinent law and its relevant implementing rules in arriving at its computation, it failed to adduce sufficient evidence to prove the truthfulness or correctness of its assertions. Its Formal Offer of Exhibits, and the reasons therefor, consisted only of the following:

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[39] *Id*.

[40] 645 Phil. 337, 362 (2010).

[41] 620 Phil. 442, 455 (2009).

1) Exhibit A – Field Investigation Report for the 7.7118 hectares

- To prove that an actual investigation of the area subject matter of the case was conducted and participated by the personnel of the Department of Agrarian Reform, Land Bank of the Philippines and the representative of the Agrarian Reform Committee that will show the actual condition of the property at the time of the voluntary offer of the landowner of her property to the government;

2) Exhibit B – Market Value per Ocular Inspection for the 7.7118 hectares

- To prove where the location adjustment factor is taken which is used in the computation of valuation

x x x x x x x x x

4) Exhibit D – Claims Valuation and Processing Form for the 7.7118 hectares

- **To show the detailed computation/valuation made on the properties subject matter of this case under DAR Administrative Order No. 5, series of 1998 using the formula LV = (CNI x .90) + (MV x .10)**
- To show the date of receipt of LANDBANK of the claim folder from the Department of Agrarian Reform which is used as the basis [in] determining the average price of the crops found in the property at the time of the field investigation/ocular inspection

x x x x x x x x x

7) Exhibit G – PCA Municipal Selling Price for Coconut (Sorsogon Province)

- T[o] show the average selling price of copra per kilo for the municipality of Pilar[,] Sorsogon for the period October 2001 to September 2002 which is ₱9.97 per kilo.[42] (Emphasis supplied)

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[42] See LBP's Formal Offer of Exhibits, CA *rollo*, pp. 94-95.

The LBP used the formula LV = (CNI x. 90) + (MV x .10). Concededly, it was able to sufficiently establish the Capitalized Net Income (CNI) factor[43] of the formula. However, the same is not true regarding the Market Value (MV) component thereof. While the CNI factor, as computed in the Claims Valuation and Processing Form (Claims Form), finds support from and can be adequately explained by a simple perusal of the documents forming part of the records of this case,[44] the MV component, on the other hand, does not have any similar support and basis as a thorough search of the records failed to produce the same.

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[43] Below is the formula provided under DAR. A.O. No. 05-98 to obtain the CNI:

"$CNI=\frac{(AGPxSP)-CO}{0.12}$

Where:

CNI - Capitalized Net Income

AGP - Annual Gross Production corresponding to the latest available 12-months' gross production immediately preceeding the date of FI.

SP- The average of the latest available 12-months'selling prices prior to the date of receipt of the CF by LBP for processing, such prices to be secured from the Department of Agriculture (DA) and other appropriate regulatory bodies, or in their absence, from the Bureau of Agriculture Statistics. If possible, SP date a shall be gathered for the barangay or municipality where the property is located. In the absence thereof, SP may be secured within the province or region.

CO - Cost of Operations

Whenever the cost of operations could not be obtained or versified, an assumed net income rate (NIR) of 20% shall be used. Landholdings planted to coconut which are productive at the time of FI shall continue to use the assumed NIR of 70%. DAR and LBP shall continue to conduct joint industry studies to establishe the applicable NIR for each crop covered under CARP.

0.12 - Capitalized Rate"

Here, we substitute the following figures as follows:

$$CNI = \frac{611.7 \text{ kg} \times ₱9.97 \times 70\%}{0.12}$$

$$CNI = ₱35,575.45$$

[44] The Field Investigation Report, CA *rollo*, p. 103, indicates that the AGP of the subject property amounts to 611.7 kgs. The PCA Production Data for Coconut for Pilar, Sorsogon, *id*. at 112, on the other hand, reflects the amount of ₱9.965 (or ₱9.97 when rounded off) as SP.

The Claims Form, which the LBP insists embodies a detailed computation using the formula earlier cited, did not reflect how the data and figures were arrived at and if they were indeed correct. The LBP did not present any testimonial evidence before the RTC which could explain or corroborate how it came up with the figures and what credence ought to be accorded to them. All that the Claims Form showed is the LBP's computation, and nothing more. As we held in *Land Bank of the Philippines v. Livioco*,[45] "the computation in the Form may be mathematically correct, but there is no way of knowing if the values or data used in the computation are true." For this reason we cannot uphold the LBP's valuation. Besides, LBP's Formal Offer of Exhibits was admitted only when respondents failed to offer any objection. In any case, even considering the absence of objection on the part of respondents, LBP must still prove the basis and correctness of its computation. LBP miserably failed in this regard.

We cannot agree to the valuations fixed by the PARAD and the RTC, valuations that found their way into rulings that were affirmed *in toto* and with modification by the CA, respectively. These rulings were arrived at in clear disregard of the formula set forth under DAR A.O. No. 05-98. As borne out by their respective Decisions, these tribunals considered *only* the Comparable Sales (CS) factor to the exclusion of the other factors, namely, the CNI and MV.

Aggravating the situation, the CS factor was not determined pursuant to the guidelines laid down in DAR A.O. No. 05-98. Respondents merely submitted a notarized Deed of Absolute Sale between them and Wilson Tarog reflecting an amount of ₱200,000.00[46] per hectare. A second notarized Deed of Voluntary Land Transfer executed between Rudy Balisalisa and Abegail Sapanza was submitted fixing the amount per hectare at

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Lastly, the Court presumes that the cost of operations could not be obtained or verified, thus, the use of the assumed NIR of 70% by LBP.

[45] *Supra* note 40 at 363.

[46] See PARAD Decision, *rollo*, p. 153.

₱241,462.00.[47] Additionally, respondents proffered in evidence Municipal Resolution No. 79, Series of 2002,[48] declaring the intent of Pilar, Sorsogon to develop Hacienda Chu as an agri-economic-industrial site in accordance with its town expansion program. All of these, however, are irrelevant as DAR A.O. No. 05-98 itself categorically enumerates the guidelines for determining the CS factor, thus:

C. 1. The following rules shall be observed in the computation of CS:

a. As a general rule, there shall be at least three (3) Sales Transactions.

At least one comparable sales transaction must involve land whose area is at least ten percent (10%) of the area being offered or acquired but in no case less than one hectare. The other transaction/s should involve land whose area is/are at least one hectare each.

b. If there are more than three (3) STs available in the same barangay, all of them shall be considered.

c. If there are less than three (3) STs available, the use of STs may be allowed only if AC and/or MVM are/is present.

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C. 2. The criteria in the selection of the comparable sales transactions (ST) shall be as follows:

a. When the required number of STs is not available at the barangay level, additional STs may be secured from the municipality where the land being offered/covered is situated to complete the required three comparable STs. In case there are more STs available than what is required at the municipal level, the most recent transactions shall be considered. The same rule shall apply at the provincial level when no STs are available at the municipal level. In all cases, the combination of STs sourced from the barangay, municipality and province shall not exceed three transactions.

b. The land subject of acquisition as well as those subject of comparable sales transactions should be similar in topography, land

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[47] *Id*.

[48] *Id*.

use, i.e., planted to the same crop. Furthermore, in case of permanent crops, the subject properties should be more or less comparable in terms of their stages of productivity and plant density.

c. The comparable sales transactions should have been executed within the period January 1, 1985 to June 15, 1988, and registered within the period January 1, 1985 to September 13, 1988.

d. STs shall be grossed up from the date of registration up to the date of receipt of CF by LBP from DAR for processing, in accordance with Items II.A.9.

Respondents presented only *two* comparable sales transactions. This falls short of the requirements of DAR A.O. No. 05-98.

The PARAD erroneously considered the municipal resolution as the third comparable sales transaction when it noted and held that:

x x x And, last is a Municipal Resolution No. 79 Series of 2002 declaring the entire Hacienda Chu [in] San Antonio Sapa, Pilar, Sorsogon as Town Expansion and classified the same as an Industrial Area (Annex "C"). That the subject property is very productive, with good location, very near x x x the Poblacion, and, accessible by land and water x x x

It is a well-settled rule that in determining the valuation of the properties a comparable sale transaction of similar nearby places is admissible in evidence x x x. Thus from the evidence submitted by the landowner, the Board is convinced that the valuation by the Land Bank of the Philippines is in fact unreasonable, considering that the subject property [has] good production, topography and [is] accessible on both land and water. **The Board however cannot grant the prayer for Three Hundred Fifty Thousand Pesos per hectare considering that in comparable sales transactions the Board can only grant the lowest among those presented as [evidence]. And, therefore the Board can only grant the amount of Two Hundred Thousand Pesos per hectare (Annex A)**.[49] (Emphasis supplied)

The municipal resolution could not in any manner be regarded as a comparable sales transaction precisely because no sale

[49] *Rollo*, p. 153.

transaction ever took place. At best, the said resolution merely manifested the *formal intention* of the local government of Pilar to acquire certain portions of the subject properties.

Equally glaring is the fact that none of the tribunals below took into *full consideration* the factors laid down in Section 17 of RA 6657 – a necessary requirement which no court of law is at liberty to disregard if sound judicial discretion is to be exercised at all in determining just compensation. Instead, this Court notes that the RTC, not to mention the CA, *primarily* took account of an extraneous factor – potentials of the land – to justify the award of ₱200,000.00 per hectare. Discounting respondents' evidence on the comparable sales transactions, the potentials of the landholding may then be said to have become the main factor supporting the valuation thereof. This conclusion is even borne out by the Decisions of the PARAD, the RTC, and the CA whose discussions centered thereon. However, this Court has already reiterated in *Land Bank of the Philippines v. Livioco*[50] that, such factor, *standing alone*, has already been dismissed as improper basis for assessing the just compensation in the expropriation of agricultural lands. Thus:

> x x x While the potential use of an expropriated property is sometimes considered in cases where there is a great improvement in the general vicinity of the expropriated property, it should never control the determination of just compensation (which appears to be what the lower courts have erroneously done). **The potential use of a property should not be the principal criterion for determining just compensation for this will be contrary to the well-settled doctrine that the fair market value of an expropriated property is determined by its character and its price at the time of taking, not its potential uses. If at all, the potential use of the property or its "adaptability for conversion in the future is a factor, not the ultimate in determining just compensation**.[51] (Emphasis supplied)

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[50] *Supra* note 40.

[51] *Id*. at 357.

Despite the foregoing, the PARAD, the RTC, and the CA, proceeded to rule in respondents' favor on the basis of their evidence and, with meager evidence to support their pronouncements, pegged the price of the RA 6657-acquired property at ₱200,000.00 and ₱300,000.00, respectively, per hectare. We cannot uphold the same.

As may be gleaned from the above discussion, the respective evidence of both parties are insufficient to enable this Court to come up with a correct computation on the just compensation to which respondents are entitled. However, as this Court is not a trier of facts, this Court cannot receive new evidence from the parties that would aid or assist it in the prompt resolution of this case. Thus, this Court is constrained to remand the case to the RTC for the reception of evidence and the determination of just compensation in accordance with our pronouncement in *Alfonso v. Land Bank of the Philippines*.[52]

PD 27-acquired land

a. Remand case to the RTC for determination of just compensation

b. Award of interest

a. Remand case to the RTC for determination of just compensation

The appellate court also incorrectly ruled that the formula under EO 228 should be followed for purposes of computing just compensation in relation to PD 27-acquired lands. Citing *Land Bank of the Philippines v. Imperial*,[53] the CA held that the guidelines provided under PD 27 and EO 228 remained operative despite the passage of RA 6657 given that EO 229 states that PD 27 shall continue to operate with respect to rice and corn lands.

In a number of cases, such as *Land Bank of the Philippines v. Hon. Natividad*,[54] *Lubrica v. Land Bank of*

[52] *Supra* note 37.

[53] 544 Phil. 378, 386-387 (2007).

[54] 497 Phil. 738, 746-747 (2005).

the Philippines,[55] *Land Bank of the Philippines v. Gallego, Jr.,*[56] *Land Bank of the Philippines v. Heirs of Maximo and Gloria Puyat,*[57] and *Land Bank of the Philippines v. Santiago, Jr.*,[58] we definitively ruled that when the agrarian reform process is still incomplete as the just compensation due the landowner has yet to be settled, just compensation should be determined, and the process concluded, under Section 17 of RA 6657, which contains the specific factors to be considered in ascertaining just compensation, *viz.*:

SECTION 17. *Determination of Just Compensation.*—

In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

In *Land Bank of the Philippines v. Gallego, Jr.*,[59] we explained that:

The Court has already ruled on the applicability of agrarian laws, namely, P.D. No. 27/E.O. No. 228 in relation to Republic Act (R.A.) No. 6657, in prior cases concerning just compensation.

In *Paris v. Alfeche*, the Court held that the provisions of R.A. No. 6657 are also applicable to the agrarian reform process of lands placed under the coverage of P.D. No. 27/E.O. No. 228, which has not been completed upon the effectivity of R.A. No. 6657. Citing *Land Bank of the Philippines v. Court of Appeals*, the Court in *Paris* held that P.D. No. 27 and E.O. No. 228 have suppletory effect to R.A. No. 6657, to wit:

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[55] 537 Phil. 571, 581-582 (2006).

[56] 596 Phil. 742, 753-754 (2009).

[57] 689 Phil. 505, 515 (2012).

[58] 696 Phil. 142, 156-157 (2012).

[59] *Supra* note 56 at 753-754.

We cannot see why Sec. 18 of RA [No.] 6657 should not apply to rice and corn lands under PD [No.] 27. **Section 75 of RA [No.] 6657 clearly states that the provisions of PD [No.] 27 and EO [No.] 228 shall only have a suppletory effect. Section 7 of the Act also provides –**

> Sec. 7. *Priorities*. The DAR, in coordination with the PARC shall plan and program the acquisition and distribution of all agricultural lands through a period of (10) years from the effectivity of this Act. Lands shall be acquired and distributed as follows:
>
> Phase One: ***Rice and Corn lands under P.D.* 27**; all idle or abandoned lands; all private lands voluntarily offered by the owners of agrarian reform; x x x and all other lands owned by the government devoted to or suitable for agriculture, which shall be acquired and distributed immediately upon the effectivity of this Act, with the implementation to be completed within a period of not more than four (4) years x x x.

This eloquently demonstrates that RA [No.] 6657 includes PD [No.] 27 lands among the properties which the DAR shall acquire and distribute to the landless. And to facilitate the acquisition and distribution thereof, Secs. 16, 17 and 18 of the Act should be adhered to. In *Association of Small Landowners of the Philippines v. Secretary of Agrarian Reform*[,] this Court applied the provisions (of) RA 6657 to rice and corn lands when it upheld the constitutionality of the payment of just compensation for PD [No.] 27 lands through the different modes stated in Sec. 18.

Particularly, in *Land Bank of the Philippines v. Natividad*, where the agrarian reform process in said case "is still incomplete as the just compensation to be paid private respondents has yet to be settled," the Court held therein that just compensation should be determined and the process concluded under R.A. No. 6657.

The retroactive application of R.A. No. 6657 is not only statutory but is also founded on equitable considerations. In *Lubrica v. Land Bank of the Philippines*, the Court declared that **it would be highly inequitable on the part of the landowners therein to compute just compensation using the values at the time of taking in 1972, and not at the time of payment, considering that the government**

and the farmer-beneficiaries have already benefited from the land although ownership thereof has not yet been transferred in their names. The same equitable consideration is applicable to the factual milieu of the instant case. The records show that respondents' property had been placed under the agrarian reform program in 1972 and had already been distributed to the beneficiaries but respondents have yet to receive just compensation due them. (Emphases supplied)

It bears stressing that while this case was pending, Congress enacted RA 9700 entitled "An Act Strengthening the Comprehensive Agrarian Reform Program [CARP], Extending the Acquisition and Distribution of All Agricultural Lands, Instituting Necessary Reforms, Amending for the Purpose Certain Provisions of Republic Act No. 6657, Otherwise known as The Comprehensive Agrarian Reform Law of 1988, as amended, and Appropriating Funds Therefor."

Significantly, just as RA 6657 had so provided, RA 9700 also provides that it shall apply even to PD 27-acquired lands, albeit those that are yet to be acquired and distributed by the DAR. It likewise provided for further amendments to RA 6657, as amended, including Section 17 thereof, by including two new factors in the determination of just compensation, namely (a) the value of the standing crop and (b) seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue, translated into a basic formula by the DAR, subject to the final decision of the proper court.

Nevertheless, despite the enactment of RA 9700, we take the view that this case still falls within the ambit of Section 17 of RA 6657, as amended. To emphasize, RA 9700 applies to landholdings that are yet to be acquired and distributed by the DAR. In addition, RA 9700 itself contains the qualification that "previously acquired lands wherein valuation is subject to challenge," such as the landholding subject of this case, "shall be completed and resolved pursuant to Section 17 of RA 6657, as amended,"[60] thus:

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[60] *Land Bank of the Philippines v. Santiago, Jr., supra* note 58 at 160.

Section 5. Section 7 of Republic Act No. 6657, as amended, is hereby further amended to read as follows:

> SEC. 7. *Priorities*. - The DAR, in coordination with the Presidential Agrarian Reform Council (PARC) shall plan and program the final acquisition and distribution of all remaining unacquired and undistributed agricultural lands from the effectivity of this Act until June 30, 2014. **Lands shall be acquired and distributed as follows:**
>
> Phase One: During the five (5)-year extension period hereafter all remaining lands above fifty (50) hectares shall be covered for purposes of agrarian reform upon the effectivity of this Act. All private agricultural lands of landowners with aggregate landholdings in excess of fifty (50) hectares which have already been subjected to a notice of coverage issued on or before December 10, 2008; **rice and corn lands under Presidential Decree No. 27**; all idle or abandoned lands; all private lands

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It must be pointed out that "RA 6657, as amended" refers to amendments prior to those introduced under RA 9700. This is evidenced by referring to Section 7 of RA 9700, which **further amends** Section 17 of RA 6657, as amended. It reads:

> **Section 7.** Section 17 of Republic Act No. 6657, **as amended**, is hereby **further amended** to read as follows:
>
> SEC. 17. *Determination of Just Compensation*. - In determining just compensation, the cost of acquisition of the land, **the value of the standing crop**, the current: value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, **and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), translated into a basic formula by the DAR** shall be considered, **subject to the final decision of the proper court**. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation. (Emphasized portions reflect the amendments.)

The above provisions demonstrate that the Section 17 mentioned in Section 5 of RA 9700 is the old Section 17 under RA 6657, as amended; that is, prior to **further** amendment by RA 9700. A perusal of the provisions of RA 9700 will establish that the old provisions, under RA 6657, are referred to as Sections under "RA 6657, as amended," as opposed to "further amendments" under RA 9700.

> voluntarily offered by the owners for agrarian reform: *Provided*, That with respect to voluntary land transfer, only those submitted by June 30, 2009 shall be allowed *Provided*, *further*, That after June 30, 2009, the modes of acquisition shall be limited to voluntary offer to sell and compulsory acquisition: ***Provided*, *furthermore*, That all previously acquired lands wherein valuation is subject to challenge by landowners shall be completed and finally resolved pursuant to Section 17 of Republic Act No. 6657, as amended:** x x x (Emphases supplied.)

Our ruling further finds support in DAR A.O. No. 02-09, the implementing rules of RA 9700, Chapter VI (Transitory Provision) of which specifically provides:

> VI. *Transitory Provision*
>
> With respect to cases where the Master List of ARBs has been finalized on or before July 1, 2009 pursuant to Administrative Order No. 7, Series of 2003, the acquisition and distribution of landholdings shall continue to be processed under the provisions of R.A. No. 6657 prior to its amendment by R.A. No. 9700.
>
> However, **with respect to land valuation, all Claim Folders received by LBP prior to July 1, 2009 shall be valued in accordance with Section 17 of R.A. No. 6657 prior to its amendment by R.A. No. 9700.** (Emphasis supplied)

From the foregoing, it is evident that DAR A.O. No. 02-09 requires that landholdings, the claim folders of which had been received by LBP prior to July 1, 2009, be valued pursuant to the old Section 17 of RA 6657, as amended,[61] or prior to its further amendment by RA 9700.

Here, the Claim Folder was received on November 27, 2002, as evidenced by the Memorandum Request to Value the Land.[62] Hence, by express mandate of RA 9700 *vis-à-vis* DAR A.O. No. 02-09, Section 17 of RA 6657, as amended, shall apply for purposes of ascertaining just compensation.

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[61] *Id*. at 161.

[62] CA *rollo*, p. 113.

This pronouncement finds support in the Court's ruling in *Land Bank of the Philippines v. Kho*,[63] *viz.*:

Case law dictates that when the acquisition process under PD 27 is still incomplete, such as in this case where the just compensation due to the landowner has yet to be settled, just compensation should be determined and the process concluded under RA 6657, as amended.

For the purposes of determining just compensation, the fair market value of an expropriated property is determined by its character and its price at the time of *taking*, or the time when the landowner was deprived of the use and benefit of his property, such as when the title is transferred in the name of the beneficiaries. In addition, the factors enumerated under Section 17 of RA 6657, as amended, *i.e., (a)* the acquisition cost of the land, *(b)* the current value of like properties, *(c)* the nature and actual use of the property, and the income therefrom, *(d)* the owner's sworn valuation, *(e)* the tax declarations, (f) the assessment made by government assessors, *(g)* the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property, and *(h)* the nonpayment of taxes or loans secured from any government financing institution on the said land, if any, must be equally considered.

However, it bears pointing out that while Congress passed **RA 9700** on August 7, 2009, further amending certain provisions of RA 6657, as amended, among them, Section 17, and declaring '[t]hat all previously acquired lands wherein valuation is subject to challenge by landowners shall be completed and finally resolved pursuant to Section 17 of [RA 6657], as amended,' DAR AO 2, series of 2009, which is the implementing rules of RA 9700, had clarified that the said law shall not apply to claims/cases where the **claim folders were received by the LBP prior to July 1, 2009**. In such situation, just compensation **shall be determined in accordance with Section 17 of RA 6657, as amended, *prior to its further amendment by RA 9700*.**

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It is significant to stress x x x that DAR AO 1, series of 2010 which was issued in line with Section 31 of RA 9700 empowering

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[63] G.R. No. 214901, June 15, 2016. See also *Heirs of Pablo Feliciano, Jr. v. Land Bank of the Philippines*, G.R. No. 215290, January 11, 2017.

the DAR to provide the necessary rules and regulations for its implementation, became effective only *subsequent to July 1, 2009*. Consequently, it cannot be applied in the determination of just compensation for the subject land where the claim folders were undisputedly received by the LBP *prior to July 1, 2009*, and, as such, should be valued in accordance with Section 17 of RA 6657 prior to its further amendment by RA 9700 pursuant to the cut-off date set under DAR AO 2, series of 2009 (cut-off rule). Notably, DAR AO 1, series of 2010 did not expressly or impliedly repeal the cut-off rule set under DAR AO 2, series of 2009, having made no reference to any cut-off date with respect to land valuation for previously acquired lands under PA 27 and EO 228 wherein valuation is subject to challenge by landowners. Consequently, the application of DAR AO 1, series of 2010 should be, thus, limited to those where the claim folders were received *on or subsequent to July 1, 2009*.

In this case, x x x [s]ince the claim folders were received by the LBP prior to July 1, 2009, the RTC should have computed just compensation using pertinent DAR regulations applying Section 17 of RA 6657 prior to its amendment by RA 9700 instead of adopting the new DAR issuance, absent any cogent justifications otherwise. Therefore, as it stands, the RTC and the CA were duty-bound to utilize the basic formula prescribed and laid down in pertinent DAR regulations existing prior to the passage of RA 9700, to determine just compensation.

Nonetheless, the RTC, acting as a SAC, is reminded that it is not strictly bound by the different [formulas] created by the DAR if the situations before it do not warrant their application. To insist on a rigid application of the formula goes beyond the intent and spirit of the law, bearing in mind that the valuation of property or the determination of just compensation is essentially a judicial function which is vested with the courts, and not with administrative agencies. Therefore, the RTC must still be able to reasonably exercise its judicial discretion in the evaluation of the factors for just compensation, which cannot be restricted by a formula dictated by the DAR when faced with situations that do not warrant its strict application. However, the RTC must explain and justify in clear terms the reason for any deviation from the prescribed factors and formula. (Emphasis in the original)

b. Award of interest

We also agree with the LBP's stance that the award of compounded interest is not proper.

In *Land Bank of the Philippines v. Spouses Chico*,[64] we held that "when just compensation is determined under R.A. No. 6657, no incremental, compounded interest of six percent (6%) *per annum* shall be assessed x x x as the same applies only to lands taken under P.D. No. 27 and E.O. No. 228, pursuant to DAR A.O. No. [13-94], x x x and not Sec. 26 of R.A. No. 6657 x x x."

The rationale for this is explained in *Land Bank of the Philippines v. Court of Appeals*[65] to wit: that DAR A.O. No. 13-94 aims to compensate the landowners for unearned interests because had payment been made in 1972 when the GSP for rice was pegged at ₱35.00, and this amount was deposited in a bank, it would have earned a compounded interest of 6% per *annum*:

> x x x Thus, if the PARAD used the 1972 GSP, then the product of (2.5 x AGP x ₱35 x x x) could be multiplied by (1.06)n to determine the value of the land plus the additional 6% compounded interest it would have earned from 1972. **However, since the PARAD already increased the GSP from ₱35.00 to ₱300.00/cavan of palay x x x, there is no more need to add any interest thereon, much less compound it.** To the extent that it granted 6% compounded interest to private respondent Jose Pascual, the Court of Appeals erred.[66] (Emphasis supplied)

If upon remand of this case the LBP is found to be in delay in the payment of just compensation, then it is bound to pay interest. In *Land Bank of the Philippines v. Santiago, Jr.,*[67] we ruled that interest may be awarded in expropriation cases, particularly where delay attended the payment of just compensation. There, we categorically stressed that the interest imposed in case of delay in payments in agrarian cases is in the nature of damages for delay in payment which, "in effect, makes the obligation on the part of the government one of forbearance."[68] Upon this point,

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[64] *Supra* note 33 at 290.

[65] 378 Phil. 1248, 1265-1266 (1999).

[66] *Id*. at 1266.

[67] *Supra* note 58.

[68] *Id*. at 162.

nothing could be any clearer than our pronouncement in *Land Bank of the Philippines v. Santiago, Jr.,* thus:

> Quoting *Republic v. Court of Appeals* this Court, in *Land Bank of the Philippines v. Rivera*, held:
>
> > The constitutional limitation of just compensation is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, if fixed at the time of the actual taking by the government. Thus, if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interest on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. **In fine, between the taking of the property and actual payment, legal interests accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.**
>
> x x x x x x x x x
>
> **The Court, in *Republic*, recognized that the just compensation due to the landowners for their expropriated property amounted to an effective forbearance on the part of the State**. x x x[69] (Emphases supplied)

Be that as it may, the LBP is bound to pay interest at 12% *per annum* "from the time of taking until June 30, 2013. Thereafter, or beginning July 1, 2013, until fully paid, the just compensation due the landowners shall earn interest at the new legal rate of 6% *per annum* x x x.[70] In *Nacar v. Gallery Frames*,[71] citing *Eastern Shipping Lines v. Court of Appeals*[72] which has

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[69] *Id*. at 162-163.

[70] *Department of Agrarian Reform v. Spouses Sta. Romana,* 738 Phil. 590, 603 (2014).

[71] 716 Phil. 267, 278-279 (2013).

[72] 304 Phil. 236, 252-253 (1994).

been modified to reflect *Bangko Sentral ng Pilipinas*-Monetary Board Circular No. 799,[73] we held that:

> x x x [T]he guidelines laid down in the case of Eastern Shipping Lines are accordingly modified to embody BSP-MB Circular No. 799, as follows:
>
> I. When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.
>
> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
>
> 1. **When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.** (Emphasis supplied)

Against the foregoing backdrop, a 12% interest *per annum* computed from the date of the taking of the subject property until June 30, 2013, and 6% interest *per annum* from July 1, 2013 until fully paid, on the just compensation to be ascertained by the RTC, shall be imposed although not specifically prayed for by respondents. In *Prince Transport, Inc. v. Garcia,*[74] citing *BPI Family Bank v. Buenaventura*,[75] we recognized that "the general prayer is broad enough to justify [the grant] of a remedy different from or together with the specific remedy" sought. Moreover, we stressed in *Prince Transport, Inc. v. Garcia* that even if a specific remedy is not prayed for, we may confer on the party the proper relief if the facts alleged in the complaint and the evidence presented so warrant as "[t]he prayer in the complaint for other reliefs

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[73] Took effect on July 1, 2013.

[74] 654 Phil. 296, 314 (2011).

[75] 508 Phil. 423, 436-437 (2005).

equitable and just in the premises justifies the grant of a relief not otherwise specifically prayed for."[76] This is the situation here.

Guidelines in the remand of the case

The Court notes that the date of taking of both of respondents' property cannot be reasonably ascertained from the records of the case as neither the pleadings filed by the parties nor the Decisions rendered by the lower tribunals contained any allegations nor findings thereon. Thus, the Court hereby resolves to order the RTC to determine the date of taking – it being an indispensable component of just compensation – of the subject landholdings. Accordingly, the LBP may submit in evidence the Certificates of Land Ownership Award (for the RA 6657-acquired property) and Emancipation Patents (for the PD 27-acquired land), which are conclusive proof of actual taking of the properties, granted to the farmer-beneficiaries of said lands. Alternatively, it may present the Notice of Coverage, Notice of Valuation, Letter of Invitation to A Preliminary Conference and Notice of Acquisition issued by the DAR to confirm symbolic compulsory taking of the RA 6657-acquired property.[77]

It bears emphasis that despite the enactment of RA 9700, the determination of just compensation for both landholdings shall be pursuant to Section 17 of RA 6657, as amended, in view of the qualifications imposed by RA 9700.

It must be reiterated too that the factors laid down in Section 17 of RA 6657, as amended, and the formula as translated by the DAR in its implementing rules, are mandatory and may not be disregarded by the RTC. Both parties are reminded that they ought to present evidence in accordance with the requirements set forth in the relevant DAR issuances. For this reason, this Court restates that even if the landowner fails to prove a higher amount as just compensation, the LBP must substantiate its valuation and prove the correctness of its claims. Naturally, it behooves the LBP to present clear and

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[76] *Supra* note 74 at 314.

[77] See *Crisologo-Jose v. Land Bank of the Philippines*, 525 Phil. 404, 410-411 (2006).

convincing documentary and, if necessary, testimonial, evidence to justify its valuation and how this was arrived at.

Moreover, as regards the RA 6657-acquired property, the RTC must be reminded that although the potential use of an expropriated property may be factored in, especially in instances where there is a significant improvement in the locality of the expropriated property, that factor, however, should not be the controlling component in the determination of just compensation. Otherwise, it will run afoul of the well-settled principle that the fair market value of an expropriated property is determined essentially by its character and by its price at the time of taking, not by its potential uses.

Finally, the RTC may not award compounded interest on the PD 27-acquired land, considering that RA 6657, which is now applicable even to landholdings covered by PD 27, does not itself expressly grant it; what is allowed is the grant of interest in the nature of delay in payment of just compensation. Hence, the LBP is obliged to pay interest at 12% *per annum* from the date of taking until June 30, 2013, and 6% *per annum* from July 1, 2013 until fully paid, in the event it is found to be in delay in the payment of just compensation.

WHEREFORE, the Petition is hereby **PARTLY GRANTED.** The January 18, 2010 Decision and May 24, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 93518 are **REVERSED and SET ASIDE**. Land Valuation Case Nos. LV-30-'03 and LV-48-'03 are hereby **REMANDED** to the Regional Trial Court of Sorsogon City, Branch 52, for the determination of the just compensation strictly in accordance with the guidelines set forth in this Decision.

SO ORDERED.

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

Perlas-Bernabe, J., on official leave.

THIRD DIVISION

[G.R. No. 193887. March 29, 2017]

SPOUSES DENNIS ORSOLINO AND MELODY ORSOLINO, *petitioners, vs.* **VIOLETA FRANY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; HOW GENUINENESS OF HANDWRITING PROVED; A COMPARISON OF BOTH THE DIFFERENCES AND SIMILARITIES IN THE QUESTIONED SIGNATURES SHOULD BE MADE.— Basic is the rule that forgery cannot be presumed and must be proved by clear, positive and convincing evidence, thus, the burden of proof lies on the party alleging forgery. One who alleges forgery has the burden to establish his case by a preponderance of evidence. x x x Mere variance of the signatures cannot be considered as conclusive proof that the same were forged. The Spouses Orsolino failed to prove their allegation and simply relied on the apparent difference of the signatures. Moreso, they were not able to establish that the signatures on the said documents were not Carolina's signatures since there had never been an accurate examination of the questioned signatures. x x x Evidently, the testimonial and documentary evidence adduced by Spouses Orsolino does not suffice the requirement needed to show the genuineness of handwriting as set forth by Section 22 of Rule 132 of the Rules of Court. A comparison of both the differences and similarities in the questioned signatures should have been made to satisfy the demands of evidence.

2. CIVIL LAW; PERSONS AND FAMILY RELATIONS; CONJUGAL PARTNERSHIP; PRESUMPTION THAT ALL PROPERTY OF THE MARRIAGE BELONGS THEREIN APPLIES ONLY WHEN THERE IS PROOF THAT THE PROPERTY WAS ACQUIRED DURING THE MARRIAGE; FAMILY HOME AS CONJUGAL

PROPERTY.— [T]he Court does not agree with the RTC's finding that the sale was void because the subject property was conjugal at the time Carolina sold it to the respondent. Article 160 of the Civil Code provides that all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife. However, the presumption under said article applies only when there is proof that the property was acquired during the marriage. Proof of acquisition during the marriage is an essential condition for the operation of the presumption in favor of the conjugal partnership.

APPEARANCES OF COUNSEL

U.P. Office of Legal Aid for petitioners.
Rogelio D. Directo for respondent.

D E C I S I O N

REYES, *J.*:

Assailed in this petition for review on *certiorari*[1] under Rule 45 of the Rules of Court are the Decision[2] dated March 30, 2010 and Resolution[3] dated September 1, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 108220, which reversed and set aside the Decision[4] dated March 5, 2009, of the Regional Trial Court (RTC) of Quezon City, Branch 98, in Civil Case No. Q-07-61602, and reinstated the Decision[5] dated September 19, 2007 of the Metropolitan Trial Court (MeTC) of Quezon City, Branch 39, in Civil Case No. 35190 for Unlawful Detainer.

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[1] *Rollo*, pp. 18-41.

[2] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Romeo F. Barza and Stephen C. Cruz concurring; *id*. at 45-55.

[3] *Id*. at 59-60.

[4] Rendered by Presiding Judge Evelyn Corpus-Cabochan; *id*. at 70-80.

[5] Rendered by Presiding Judge Luis Zenon Q. Maceren; *id*. at 82-85.

The Facts

This petition stemmed from a complaint for ejectment over a house and lot located at No. 37 Ilang-Ilang Street corner Camias Street, Barangay Capri, Novaliches, Quezon City, filed by Spouses Noel and Violeta Frany (respondent) (Spouses Frany) against petitioners Spouses Dennis and Melody Orsolino (Spouses Orsolino), and all persons claiming rights under them.[6]

Spouses Frany claimed that Carolina Orsolino (Carolina), the mother of petitioner Dennis, authorized her other son Sander Orsolino (Sander), to sell the subject property as evidenced by a Special Power of Attorney[7] (SPA) dated November 20, 2004. On the same date, Sander sold the subject property to Spouses Frany for the sum of ₱200,000.00, evidenced by a Deed of Sale.[8] The respondent said that it was agreed upon that Spouses Orsolino, who are the current occupants of the subject property, shall vacate and peacefully surrender the possession of the same to Spouses Frany on or before the end of November 2004. However, despite repeated demands to vacate the subject property, the petitioners failed to do so. The said matter was also brought before the barangay for conciliation but no settlement was reached.[9]

For their part, the Spouses Orsolino claimed that the subject property is a government property which is being used as a relocation site. They said that they had been occupying the subject property since May 2000 and they derived their right to stay therein from their mother Carolina, who has bought her right to the subject property from Julieta Guaniso in August of 1998. The Spouses Orsolino also alleged that: a) they were not aware of the sale made in favor of Spouses Frany; b) petitioner Dennis has no brother by the name of Sander; c) the signature of Carolina appearing in the SPA and Deed of Sale is a forgery;

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[6] *Id*. at 87-91.

[7] *Id*. at 92.

[8] *Id*. at 93-94.

[9] *Id*. at 87-88.

d) the SPA and the Deed of Sale are spurious documents; e) they did not receive any demand letter from Spouses Frany; and f) there was no real confrontation before the barangay.[10]

On September 19, 2007, the MeTC rendered its judgment[11] in favor of Spouses Frany and declared the sale of the subject property as valid upon finding that there was no forgery and, thereby dismissing the complaint in the following wise:

> In view of the foregoing, judgment is hereby rendered ordering [Spouses Orsolino], and all those claiming rights under them, to vacate and peacefully surrender possession over the subject premises to [Spouses Frany]; and pay [Spouses Frany] the following:
>
> 1. the sum of ₱5,000.[00], representing reasonable compensation for the use and compensation of the premises, reckoned from July 29, 2005, until the subject premises is finally vacated; and
>
> 2. cost of suit.
>
> **SO ORDERED.**[12]

The MeTC took note of the fact that petitioner Dennis admitted to having a brother by the name of Lysander Wilson Ray Orsolino (Lysander), and that petitioner Dennis did not categorically deny that the one who signed under the name of Sander in the Deed of Sale was not his brother Lysander. The MeTC ruled that the presumption that the Deed of Sale was duly executed exists, same with the SPA, since there was no evidence to overturn the presumption as to the authenticity and due execution of the said documents.[13]

Aggrieved, the Spouses Orsolino filed an appeal before the RTC.[14]

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

[11] *Id*. at 82-85.

[12] *Id*. at 84-85.

[13] *Id*. at 83.

[14] *Id*. at 154-155.

Ruling of the RTC

In a Decision[15] dated March 5, 2009, the RTC granted the appeal and set aside the MeTC's ruling, to wit:

> **WHEREFORE**, premises considered, the instant appeal filed by [Spouses Orsolino] is hereby ***GRANTED***. Accordingly, the assailed Decision dated September 19, 2007 issued by the [MeTC] of Quezon City, Branch 39, is hereby ***REVERSED* and *SET ASIDE***, and a new one is rendered ordering the instant Complaint for Unlawful Detainer filed by [Spouses Frany] to be [***DISMISSED***] for no transfer of rights was conveyed between the parties herein.
>
> SO ORDERED.[16]

Contrary to the findings of the MeTC, the RTC concluded that both the SPA and Deed of Sale showed patent irregularities and alterations which render it null and void *ab initio*. According to the RTC, these glaring and strange circumstances overcome the presumption of the authenticity and due execution of the said documents since there has been no explanation on the said alterations. The RTC also said that nothing was adduced in this case to reconcile the variance in the place of execution of the subject documents and the place where it was acknowledged before the notary public.[17]

Ruling of the CA

On appeal,[18] the CA granted the petition in its Decision[19] dated March 30, 2010 and reinstated the MeTC's judgment. In overturning the RTC ruling, the CA said that:

> The courts *a quo* failed to appreciate the documentary evidence marked as Exhibits "F" and "G" which is an acknowledgment

[15] *Id*. at 70-80.

[16] *Id*. at 80.

[17] *Id*. at 78-79.

[18] *Id*. at 62-68.

[19] *Id*. at 45-55.

receipt executed by [Sander] and [Lysander], acknowledging his receipt of the amounts of ₱6,000.00 and ₱194,000.00, respectively, representing full payment of the rights over the property, subject matter of this case. This acknowledgment receipt was attested to not just by [the respondent], as shown in Exhibit "F", but also by Leynardo T. Tiston, as shown in Exhibit "G". This showed that [Sander] and [Lysander] are one and the same person, who received the amount of ₱200,000.00 from [the respondent], for he signed as a vendor in Exhibit "F" and as an attorney-in-fact in Exhibit "G". This gives credence to [the respondent's] assertion that [Sander] and/or [Lysander] was the attorney-in-fact of [Carolina], who sold the property, and negates the claim of [Spouses Orsolino] that no [Sander] exists but admits that one [Lysander] is his brother. Moreover, a perusal of the [SPA] executed on November 20, 2004 and authorization dated November 1, 2004, shows that the two documents were witnessed by one Leynardo T. Tiston who was also the witness in the document marked as Exhibit "G". Thus, it cannot be said that the signature of [Carolina] on the said [SPA] is forged.[20] (Citations omitted)

According to the CA, Spouses Orsolino failed to present any evidence to prove the forgery except to point to the alterations in the place of execution in the SPA and Deed of Sale. They did not present evidence of the fact of forgery which can be established by comparing the alleged false signature with the authentic or genuine signature of Carolina. The CA upheld the validity of the SPA and Deed of Sale which were duly notarized since the same carry evidentiary weight with respect to their due execution and this presumption was not rebutted by clear and convincing evidence to the contrary by Spouses Orsolino.[21]

Upset by the foregoing disquisition, the Spouses Orsolino moved for reconsideration,[22] but it was denied by the CA, in its Resolution[23] dated September 1, 2010. Hence, the present petition for review on *certiorari*.

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[20] *Id*. at 51-52.

[21] *Id*. at 53.

[22] *Id*. at 429-440.

[23] *Id*. at 59-60.

The Issue

WHETHER OR NOT THE AUTHENTICITY AND DUE EXECUTION OF THE SPA AND DEED OF ABSOLUTE SALE HAVE BEEN SUFFICIENTLY ESTABLISHED.

Ruling of the Court

The petition is bereft of merit.

At the outset, it is definite that the issues raised in this petition are mainly factual which calls for the reassessment of the evidence presented by the parties and is beyond the ambit of the Court's review. However, this petition is properly given due course because of the contradictory findings of facts and rulings of the MeTC and the CA on one hand, and the RTC on the other. But even if the Court were to re-evaluate the evidence presented, considering the divergent positions of the courts below, the petition would still fail.

The bone of contention in the instant case lies on the divergent evaluation of the SPA and the Deed of Sale submitted as evidence by the respondent. Spouses Orsolino mainly dispute said documents by alleging that the signatures of Carolina on the said documents were falsified. To bolster their argument, they presented the *Panunumpa sa Katungkulan*,[24] Statement of Assets, Liabilities and Networth (SALN),[25] and Performance Appraisal Report[26] of Carolina from her previous employer to prove that Carolina's alleged genuine signature which when compared to the signature in the SPA and the Deed of Sale, showed some difference. Spouses Orsolino also question the authenticity and due execution of the said documents inasmuch as it is marred by unexplained erasures and alterations.

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[24] *Id*. at 100.

[25] *Id*. at 148-149.

[26] *Id*. at 103.

To begin with, it bears to emphasize that both trial courts and the CA are unison in finding that no forgery was proven. The RTC even declared that there is no sufficient basis to ascertain the authenticity of Carolina's signature since the allegation of Spouses Orsolino that a comparison of the forged and genuine signatures of Carolina showed patent dissimilarities is not substantiated by the evidence made available in this case. Evidently, the CA and the trial courts found that Spouses Orsolino have failed to overcome the burden of proving their allegation of forgery.

Basic is the rule that forgery cannot be presumed and must be proved by clear, positive and convincing evidence, thus, the burden of proof lies on the party alleging forgery. One who alleges forgery has the burden to establish his case by a preponderance of evidence.[27]

The Court sustains the findings of the lower courts that the bases presented by Spouses Orsolino were inadequate to sustain their allegation of forgery. Mere variance of the signatures cannot be considered as conclusive proof that the same were forged. The Spouses Orsolino failed to prove their allegation and simply relied on the apparent difference of the signatures. Moreso, they were not able to establish that the signatures on the said documents were not Carolina's signatures since there had never been an accurate examination of the questioned signatures.

In imputing discrepancy in the signatures appearing in the SPA and the Deed of Sale, Spouses Orsolino should have conducted an examination of the signatures before the court. Evidently, the foregoing testimonial and documentary evidence adduced by Spouses Orsolino does not suffice the requirement needed to show the genuineness of handwriting as set forth by Section 22[28] of Rule 132 of the Rules of Court.

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[27] *Gepulle-Garbo v. Garabato*, G.R. No. 200013, January 14, 2015, 746 SCRA 189, 198.

[28] **Section 22.** *How genuineness of handwriting proved.* — The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and

A comparison of both the differences and similarities in the questioned signatures should have been made to satisfy the demands of evidence.[29]

In this case, the Court cannot accept the claim of forgery where no comparison of Carolina's signatures were made and no witness except for Spouses Orsolino themselves were presented to testify on the same, much less an expert witness called. All that was presented were Spouses Orsolino's testimonies and the following documentary evidence: *Panunumpa sa Katungkulan*, SALN, and Performance Appraisal Report of Carolina from her previous employer. Aside from these, no other evidence was submitted by Spouses Orsolino to prove their allegation of forgery.

As to the main issue of this case on whether the authenticity and due execution of the SPA and Deed of Sale have been sufficiently established, the Court agrees with the conclusion of the CA and the MeTC that the validity of the said documents must be upheld on the ground that it enjoys the presumption of regularity of a public document since the same carry evidentiary weight with respect to their due execution. Furthermore, the fact of forgery is not established by the patent irregularities and alterations in the said documents, such as the changing of names of the places and the date written thereon.

A review of the records of this case would show that, notwithstanding, the unexplained erasures and alterations in the said documents after it was signed by Carolina, no sufficient allegation indicates that the alleged alterations had changed the meaning of the documents, or that the details differed from

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has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge.

[29] *Ladignon v. Court of Appeals,* 390 Phil. 1161, 1172 (2000), citing *American Express International, Inc. v. CA,* 367 Phil. 333, 341-342 (1999).

those intended by Carolina at the time that she signed it. Thus, it can only be concluded that Carolina had voluntarily executed the subject documents, with the intention of giving effect thereto. Spouses Orsolino's bare allegation that the said alterations invalidated the sale does not equate with the necessary allegation that the alterations were false or had changed the intended meaning of the documents.

As to the unexplained erasures and alterations in the said documents, the findings of the CA on this matter are informative:

> The RTC was referring to the alterations on the date and place of execution of the [SPA] and the Deed of Sale from November 20, 2004 to December 2004 and intercalating therein Catarman, N. Samar. This Court scrutinized Exhibits "F" and "G", wherein the partial payment of ₱6,000.00 was made on November 16, 2004 while the balance of ₱194,000.00 representing full payment for the house and lot was made on December 29, 2004. Although the RTC stated that no explanation was made as to the alterations on the date and place of execution of the Deed of Sale, it did not however consider Exhibits "F" and "G", regarding the payments received by [Spouses Orsolino], particularly the date of receipt of the payments. This is the reason why the Deed of Sale was signed on November 20, 2004 and notarized only in December 2004, after full payment was received by the attorney-in-fact. The said evidence was never rebutted by [Spouses Orsolino].[30]

The Court also took note of the fact that Sander, the person who prepared the said documents, was never confronted during the trial nor was any affidavit from him presented by Spouses Orsolino.

Lastly, the Court does not agree with the RTC's finding that the sale was void because the subject property was conjugal at the time Carolina sold it to the respondent. Article 160 of the Civil Code provides that all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife. However, the presumption under said article applies only when there is proof that the property was acquired during the marriage.

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[30] *Rollo*, pp. 52-53.

Proof of acquisition during the marriage is an essential condition for the operation of the presumption in favor of the conjugal partnership.[31]

Here, the RTC's conclusion that the subject property was conjugal was not based on evidence since Spouses Orsolino failed to present any evidence to establish that Carolina acquired the subject property during her marriage. Consequently, there is no basis for applying the presumption under Article 160 of the Civil Code to the present case.

The Court has also observed that Spouses Orsolino presented nothing to support their claim of their right to possess the subject property. There is no dispute with the fact that Spouses Orsolino were not even the registered owners of the subject property. Spouses Orsolino were not able to prove by preponderance of evidence that they are now the new owners and the rightful possessors of the subject property since they have not presented any solid proof to bolster their claim. The sad truth is that they were merely allowed to stay on the subject property by mere tolerance of Carolina. Thus, their unsubstantiated arguments are not, by themselves, enough to offset the respondent's right as the new owner of the subject property.

Lastly, the other issues raised by Spouses Orsolino, specifically their failure to receive the demand letter and the lack of prior conciliation proceeding before the barangay, are contradicted by the evidence on record. As found by the MeTC, the respondent tried to have a copy of the demand letter personally delivered to Spouses Orsolino on August 5, 2005 but the latter refused to receive the same, thus, the respondent left a copy of the demand letter in the premises.[32] Similarly, the Certificate to File Action issued by the *Punong* Barangay suffices to prove that the case was referred to the barangay for possible conciliation.

In sum, the Court finds no cogent reason to annul the findings and conclusions of the CA. Since the SPA and Deed of Sale

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[31] *Manongsong v. Estimo,* 452 Phil. 862, 878 (2003).

[32] *Rollo*, pp. 95-96.

are valid, the respondent is deemed as recognized owner of the subject property and consequently has the better right to its possession.

WHEREFORE, the petition is **DENIED**. The Decision dated March 30, 2010 and Resolution dated September 1, 2010 of the Court of Appeals in CA-G.R. SP No. 108220 are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Jardeleza,* and *Tijam, JJ.,* concur.

SECOND DIVISION

[G.R. No. 205657. March 29, 2017]

INTERNATIONAL EXCHANGE BANK NOW UNION BANK OF THE PHILIPPINES, *petitioner, vs.* **SPOUSES JEROME AND QUINNIE BRIONES, AND JOHN DOE,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; AGENCY; ELEMENTS.— In a contract of agency, "a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter." Furthermore, Article 1884 of the Civil Code provides that "the agent is bound by his acceptance to carry out the agency, and is liable for the damages which, through his non-performance, the principal may suffer." *Rallos v. Felix Go Chan & Sons Realty Corporation* lays down the elements of agency: Out of the above given principles, sprung the creation an acceptance of the *relationship of agency* whereby one party, called the principal (*mandante*), authorizes another, called the agent (*mandatario*), to act for and in his behalf in transactions with third persons. The essential elements of agency are: (1) there

is consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for himself; and (4) the agent acts within the scope of his authority.

2. ID.; ID.; ID.; REVOCATION; AN AGENCY CANNOT BE REVOKED IF A BILATERAL CONTRACT DEPENDS UPON IT; PRESENT IN THE PROMISSORY NOTE WITH CHATTEL MORTGAGE IN CASE AT BAR.— Revocation as a form of extinguishing an agency under Article 1924 of the Civil Code only applies in cases of incompatibility, such as when the principal disregards or bypasses the agent in order to deal with a third person in a way that excludes the agent. x x x While a contract of agency is generally revocable at will as it is primarily based on trust and confidence, Article 1927 of the Civil Code provides the instances when an agency becomes irrevocable: Article 1927. An agency cannot be revoked if a bilateral contract depends upon it, or if it is the means of fulfilling an obligation already contracted, or if a partner is appointed manager of a partnership in the contract of partnership and his removal from the management is unjustifiable. A bilateral contract that depends upon the agency is considered an agency coupled with an interest, making it an exception to the general rule of revocability at will. *Lim v. Saban* emphasizes that when an agency is established for both the principal and the agent, an agency coupled with an interest is created and the principal cannot revoke the agency at will. In the promissory note with chattel mortgage, the Spouses Briones authorized petitioner to claim, collect, and apply the insurance proceeds towards the full satisfaction of their loan if the mortgaged vehicle were lost or damaged. Clearly, a bilateral contract existed between the parties, making the agency irrevocable.

3. ID.; ID.; ID.; DULY CONSTITUTED AGENT LIABLE FOR NEGLIGENCE IN ITS DUTIES.— Having been negligent in its duties as the duly constituted agent, petitioner must be held liable for the damages suffered by the Spouses Briones because of non-performance of its obligation as the agent, and because it prioritized its interests over that of its principal. x x x A principal and an agent enjoy a fiduciary relationship marked with trust and confidence, therefore, the agent has the duty "to act in good faith [to advance] the interests of [its] principal."

APPEARANCES OF COUNSEL

Simeon P. Madrid for petitioner.
JLA de Vera CPA-Lawyers for respondents.

D E C I S I O N

LEONEN, *J.*:

Upon accepting an agency, the agent becomes bound to carry out the agency and shall be held liable for the damages, which the principal may incur due to the agent's non-performance.[1]

This resolves the Petition for Review on *Certiorari*[2] filed by International Exchange Bank (iBank), now Union Bank of the Philippines, assailing the Court of Appeals' September 27, 2012 Decision[3] and February 6, 2013 Resolution[4] in CA-G.R. CV. No. 97453, which upheld the June 16, 2011 Decision[5] of Branch 138, Makati City Regional Trial Court in Civil Case No. 04-557.

On July 2, 2003, spouses Jerome and Quinnie Briones (Spouses Briones) took out a loan of ₱3,789, 216.00 from iBank to purchase a BMW Z4 Roadster.[6] The monthly amortization for two (2) years was ₱78,942.00.[7]

The Spouses Briones executed a promissory note with chattel mortgage that required them to take out an insurance policy on

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[1] CIVIL CODE, Art. 1884.

[2] *Rollo,* pp. 11-76.

[3] *Id*. at 83-97. The Decision was penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Amelita G. Tolentino and Danton Q. Bueser of the Fourth Division, Court of Appeals, Manila.

[4] *Id*. at 122-123. The Resolution was penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Amelita G. Tolentino and Danton Q. Bueser of the Fourth Division, Court of Appeals, Manila.

[5] *Id*. at 77-81. The Decision was penned by Acting Presiding Judge Joselito C. Villarosa of Branch 138, Regional Trial Court, City of Makati.

[6] *Id*. at 84.

[7] *Id*.

the vehicle.[8] The promissory note also gave iBank, as the Spouses Briones' attorney-in-fact, irrevocable authority to file an insurance claim in case of loss or damage to the vehicle.[9] The insurance proceeds were to be made payable to iBank.[10]

On November 5, 2003, at about 10:50 p.m., the mortgaged BMW Z4 Roadster was carnapped by three (3) armed men in front of Metrobank Banlat Branch in Tandang Sora, Quezon City.[11] Jerome Briones (Jerome) immediately reported the incident to the Philippine National Police Traffic Management Group.[12]

The Spouses Briones declared the loss to iBank, which instructed them to continue paying the next three (3) monthly installments "as a sign of good faith," a directive they complied with.[13]

On March 26, 2004, or after the Spouses Briones finished paying the three (3)-month installment, iBank sent them a letter demanding full payment of the lost vehicle.[14]

On April 30, 2004, the Spouses Briones submitted a notice of claim with their insurance company, which denied the claim on June 29, 2004 due to the delayed reporting of the lost vehicle.[15]

On May 14, 2004, iBank filed a complaint for replevin and/or sum of money against the Spouses Briones and a person named John Doe.[16] The Complaint alleged that the Spouses Briones defaulted in paying the monthly amortizations of the mortgaged vehicle.[17]

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[8] *Id*. at 77.

[9] *Id*.

[10] *Id*.

[11] *Id*. at 78.

[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*. at 85.

[16] *Id*.

[17] *Id*.

After no settlement was arrived at during the Pre-trial Conference, the case was referred to Mediation and Judicial Dispute Resolution.[18] However, the parties still failed to agree on a compromise settlement.[19]

After pre-trial and trial on the merits, the Regional Trial Court[20] dismissed iBank's complaint. It ruled that as the duly constituted attorney-in-fact of the Spouses Briones, iBank had the obligation to facilitate the filing of the notice of claim and then to pursue the release of the insurance proceeds.[21]

The Regional Trial Court also pointed out that as the Spouses Briones' agent, iBank prioritized its interest over that of its principal when it failed to file the notice of claim with the insurance company and demanded full payment from the spouses.[22]

The dispositive portion of the Regional Trial Court Decision read:

> **WHEREFORE,** premises considered, judgment is hereby rendered dismissing this case as the obligation of both parties to each other has already been considered extinguished by compensation.
>
> **SO ORDERED.**[23] (Emphasis in the original)

The Regional Trial Court's Decision was appealed by iBank to the Court of Appeals, which dismissed[24] it on September 27, 2012.

The Court of Appeals ruled that the terms and stipulations of the promissory note with chattel mortgage were clear.[25]

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[18] *Id*. at 24.

[19] *Id*.

[20] *Id*. at 77-81.

[21] *Id*. at 78-79.

[22] *Id*. at 79-80.

[23] *Id*. at 81.

[24] *Id*. at 83-97.

[25] *Id*. at 92-93.

Sections 6 and 22 of the promissory note provided that the Spouses Briones, as the mortgagors, would insure the vehicle against loss, damage, theft, and fire with the insurance proceeds payable to iBank, as the mortgagee.[26] Furthermore, in the event of loss or damage, Spouses Briones irrevocably appointed iBank or its assigns as their attorney-in-fact with full power to process the insurance claim.[27]

The Court of Appeals stated that as the Spouses Briones' agent, iBank was bound by its acceptance to carry out the agency.[28] However, instead of filing an insurance claim, iBank opted to collect the balance of Spouses Briones' loan.[29] By not looking after the interests of its principal, the Court of Appeals ruled that iBank should be held liable for the damages suffered by Spouses Briones.[30]

The Court of Appeals likewise upheld the Regional Trial Court's ruling that "the denial of the insurance claim [for delayed filing] was a direct consequence of [the] bank's inaction in not filing the insurance claim."[31]

The dispositive portion of the Court of Appeals Decision read:

> **WHEREFORE,** the instant appeal is hereby **DENIED**. The assailed Decision dated June 16, 2011 of the Regional Trial Court, Branch 138, Makati City is **AFFIRMED**.
>
> **SO ORDERED**.[32] (Emphasis in the original)

On February 6, 2013, the Court of Appeals denied[33] iBank's motion for reconsideration,[34] prompting iBank to appeal the denial to this Court.

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[26] *Id*.
[27] *Id*. at 94.
[28] *Id*.
[29] *Id*.
[30] *Id*.
[31] *Id*. at 95.
[32] *Id*. at 97.
[33] *Id*. at 122-123.
[34] *Id*. at 98-121.

Petitioner iBank claims that it is entitled to recover the mortgaged vehicle or, in the alternative, to collect a sum of money from respondents because of the clear wording of the promissory note with chattel mortgage executed by respondents.[35] Petitioner also insists that it is entitled to the award of damages.[36]

Petitioner maintains that the insurance coverage taken on the vehicle is "only an aleatory alternative that [respondents] are entitled [to]" if their claim is granted by the insurance company.[37] Petitioner asserts that it was the duty of the respondents to file a claim with the insurance company. Thus, they should not be allowed to pass on that responsibility to petitioner and they should be held accountable for the loan taken out on the carnapped vehicle.[38]

Moreover, petitioner posits that respondent Jerome's direct dealing with the insurance company was a revocation of the agency relationship between petitioner and respondents.[39]

Petitioner holds that respondents only shifted the blame after the insurance company denied respondents' claim.[40]

On the other hand, respondents insist that when the mortgaged vehicle was carnapped, petitioner, as the agent, should have asserted its right "to collect, demand and proceed against the [insurance company.]"[41]

Respondents state that after they had informed petitioner of the loss of the mortgaged vehicle, they continued to pay the monthly installment for three (3) months as compliance with petitioner's request. Nonetheless, despite their good faith and

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[35] *Id*. at 31-34.

[36] *Id*. at 34.

[37] *Id*. at 35.

[38] *Id*. at 47.

[39] *Id*. at 48.

[40] *Id*. at 52.

[41] *Id*. at 135-136. Comment.

the insurance policy taken out on the carnapped vehicle, petitioner still demanded full payment from them.[42]

Finally, respondents maintain that petitioner failed to exercise the "degree of diligence required [of it considering] the fiduciary nature of its relationship with its client[s]."[43]

The issues for this Court's resolution are as follows:

First, whether an agency relationship existed between the parties;

Second, whether the agency relationship was revoked or terminated; and

Finally, whether petitioner is entitled to the return of the mortgaged vehicle or, in the alternative, payment of the outstanding balance of the loan taken out for the mortgaged vehicle.

I

The Petition is devoid of merit.

In a contract of agency, "a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter."[44] Furthermore, Article 1884 of the Civil Code provides that "the agent is bound by his acceptance to carry out the agency, and is liable for the damages which, through his non-performance, the principal may suffer."[45]

Rallos v. Felix Go Chan & Sons Realty Corporation[46] lays down the elements of agency:

Out of the above given principles, sprung the creation an acceptance of the *relationship of agency* whereby one party, called the principal

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[42] *Id*. at 136. Comment.

[43] *Id*. at 143. Comment.

[44] CIVIL CODE, Art. 1868.

[45] CIVIL CODE, Art. 1884.

[46] 171 Phil. 222 (1978) [Per *J*. Muñoz Palma, First Division].

(*mandante),* authorizes another, called the agent (*mandatario),* to act for and in his behalf in transactions with third persons. The essential elements of agency are: (1) there is consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for himself; and (4) the agent acts within the scope of his authority.[47] (Emphasis in the original, citation omitted)

All the elements of agency exist in this case. Under the promissory note with chattel mortgage, Spouses Briones appointed iBank as their attorney-in-fact, authorizing it to file a claim with the insurance company if the mortgaged vehicle was lost or damaged.[48] Petitioner was also authorized to collect the insurance proceeds as the beneficiary of the insurance policy.[49] Sections 6 and 22 of the promissory note state:

> 6. The MORTGAGOR agrees that he will cause the mortgaged property/ies to be insured against loss or damage by accident, theft and fire . . . with an insurance company/ies acceptable to the MORTGAGEE . . .; that he will make all loss, if any, under such policy/ies payable to the MORTGAGEE or its assigns . . . [w]ith the proceeds thereon in case of loss, payable to the said MORTGAGEE or its assigns . . . shall be added to the principal indebtedness hereby secured . . . *[M]ortgagor hereby further constitutes the MORTGAGEE to be its/his/her Attorney-in-Fact for the purpose of filing claims with insurance company including but not limited to apply, sign, follow-up and secure any documents, deeds . . . that may be required by the insurance company to process the insurance claim . . .*
>
> 22. *In case of loss or damage, the MORTGAGOR hereby irrevocably appoints the MORTGAGEE or its assigns as his attorney-in-fact* with full power and authority to file, follow-up, prosecute, compromise or settle insurance claims; to sign,

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[47] *Id*. at 226-227.

[48] *Rollo,* p. 77.

[49] *Id*.

> execute and deliver the corresponding papers, receipt and documents to the insurance company as may be necessary to prove the claim, and to collect from the latter the proceeds of insurance to the extent of its interest.[50] (Emphasis supplied, citation omitted)

Article 1370 of the Civil Code is categorical that when "the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control."[51]

The determination of agency is ultimately factual in nature and this Court sees no reason to reverse the findings of the Regional Trial Court and the Court of Appeals. They both found the existence of an agency relationship between the Spouses Briones and iBank, based on the clear wording of Sections 6 and 22 of the promissory note with chattel mortgage, which petitioner prepared and respondents signed.

II

Petitioner asserts that the Spouses Briones effectively revoked the agency granted under the promissory note when they filed a claim with the insurance company.[52]

Petitioner is mistaken.

Revocation as a form of extinguishing an agency under Article 1924[53] of the Civil Code only applies in cases of incompatibility, such as when the principal disregards or bypasses the agent in order to deal with a third person in a way that excludes the agent.[54]

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[50] *Id*. at 93.

[51] CIVIL CODE, Art. 1370.

[52] *Rollo,* p. 48.

[53] CIVIL CODE, Art. 1924 provides:

Article 1924. The agency is revoked if the principal directly manages the business entrusted to the agent, dealing directly with third persons.

[54] *Bitte v. Spouses Jonas,* G.R. No. 212256, December 9, 2015, 777 SCRA 489, 512 [Per *J.* Mendoza, Second Division].

In the case at bar, the mortgaged vehicle was carnapped on November 5, 2003 and the Spouses Briones immediately informed petitioner about the loss.[55] The Spouses Briones continued paying the monthly installment for the next three (3) months following the vehicle's loss to show their good faith.[56]

However, on March 26, 2004, petitioner demanded full payment from Spouses Briones for the lost vehicle.[57] The Spouses Briones were thus constrained to file a claim for loss with the insurance company on April 30, 2004, precisely because petitioner failed to do so despite being their agent and being authorized to file a claim under the insurance policy.[58] Not surprisingly, the insurance company declined the claim for belated filing.

The Spouses Briones' claim for loss cannot be seen as an implied revocation of the agency or their way of excluding petitioner. They did not disregard or bypass petitioner when they made an insurance claim; rather, they had no choice but to personally do it because of their agent's negligence. This is not the implied termination or revocation of an agency provided for under Article 1924 of the Civil Code.

While a contract of agency is generally revocable at will as it is primarily based on trust and confidence,[59] Article 1927 of the Civil Code provides the instances when an agency becomes irrevocable:

> Article 1927. An agency cannot be revoked if a bilateral contract depends upon it, or if it is the means of fulfilling an obligation already contracted, or if a partner is appointed manager of a partnership in the contract of partnership and his removal from the management is unjustifiable.

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[55] *Rollo,* p. 78.

[56] *Id*.

[57] *Id*.

[58] *Id*.

[59] *Republic v. Evangelista,* 504 Phil. 115, 121 (2005) [Per *J*. Puno, Second Division].

A bilateral contract that depends upon the agency is considered an agency coupled with an interest, making it an exception to the general rule of revocability at will.[60] *Lim v. Saban*[61] emphasizes that when an agency is established for both the principal and the agent, an agency coupled with an interest is created and the principal cannot revoke the agency at will.[62]

In the promissory note with chattel mortgage, the Spouses Briones authorized petitioner to claim, collect, and apply the insurance proceeds towards the full satisfaction of their loan if the mortgaged vehicle were lost or damaged. Clearly, a bilateral contract existed between the parties, making the agency irrevocable. Petitioner was also aware of the bilateral contract; thus, it included the designation of an irrevocable agency in the promissory note with chattel mortgage that it prepared for the Spouses Briones to sign.

III

Petitioner asserts that the insurance coverage is only an alternative available to the Spouses Briones;[63] and with the denial of the insurance claim, the Spouses Briones are obligated to pay the remaining balance plus interest of the mortgaged vehicle.[64]

The petitioner is again mistaken.

As the agent, petitioner was mandated to look after the interests of the Spouses Briones. However, instead of going after the insurance proceeds, as expected of it as the agent, petitioner opted to claim the full amount from the Spouses Briones, disregard the established principal-agency relationship, and put its own interests before those of its principal.

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[60] *Id*.

[61] 488 Phil. 236 (2004) [Per J. Tinga, Second Division].

[62] *Id*. at 244-245.

[63] *Rollo*, p. 35.

[64] *Id*. at 73-74.

The facts show that the insurance policy was valid when the vehicle was lost, and that the insurance claim was only denied because of the belated filing.

Having been negligent in its duties as the duly constituted agent, petitioner must be held liable for the damages suffered by the Spouses Briones because of non-performance[65] of its obligation as the agent, and because it prioritized its interests over that of its principal.[66]

Furthermore, petitioner's bad faith was evident when it advised the Spouses Briones to continue paying three (3) monthly installments after the loss, purportedly to show their good faith.[67] A principal and an agent enjoy a fiduciary relationship marked with trust and confidence, therefore, the agent has the duty "to act in good faith [to advance] the interests of [its] principal."[68]

If petitioner was indeed acting in good faith, it could have timely informed the Spouses Briones that it was terminating the agency and its right to file an insurance claim, and could have advised them to facilitate the insurance proceeds themselves. Petitioner's failure to do so only compounds its negligence and underscores its bad faith. Thus, it will be inequitable now to compel the Spouses Briones to pay the full amount of the lost property.

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[65] CIVIL CODE, Art. 1884 provides:

Article 1884. The agent is bound by his acceptance to carry out the agency, and is liable for damages which, through his non-performance, the principal may suffer.

He must also finish the business already begun on the death of the principal, should delay entail any danger.

[66] CIVIL CODE, Art. 1889 provides:

Article 1889. The agent shall be liable for damages if, there being a conflict between his interests and those of the principal, he should prefer his own.

[67] *Rollo,* p. 78.

[68] *Bank of the Philippine Islands v. Laingo,* G.R. No. 205206, March 16, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/march2016/205206.pdf> [Per *J.* Carpio, Second Division].

WHEREFORE, premises considered, the Petition is **DENIED.** The Court of Appeals Decision and Resolution dated September 27, 2012 and February 6, 2013, respectively, in CA-G.R. CV. No. 97453 are **AFFIRMED.**

SO ORDERED.

Carpio (*Chairperson*), *Peralta,* and *Martires, JJ.,* concur.

Mendoza, J., on official leave.

SECOND DIVISION

[G.R. No. 205855. March 29, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **KING REX A. AMBATANG,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.— It is settled that "factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal, unless the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance."

2. ID.; ID.; DENIAL AND ALIBI; FAILS AGAINST POSITIVE IDENTIFICATION OF ACCUSED.— The testimonies of the prosecution witnesses are sufficient to convict accused-appellant. The Regional Trial Court and the Court of Appeals made definitive findings that Jennifer and Acaba made positive, unequivocal, and categorical identifications of accused-appellant as the person who stabbed the deceased Vidal. As against these, accused-appellant offered denial and alibi as defenses, which jurisprudence has long considered weak and unreliable.

3. ID.; ID.; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR INCONSISTENCIES IN TESTIMONY.— Accused-appellant assails the supposed inconsistencies in the statements of Jennifer and Acaba, that is, their statements on how accused-appellant left his residence and stabbed Vidal, and on the specific number of times that they saw Vidal get stabbed by accused-appellant. These inconsistencies, however, are too minor. They are ultimately ineffectual in absolving accused-appellant of liability.

4. CRIMINAL LAW; MURDER; DAMAGES.— Treachery is present to qualify Vidal's killing to murder. x x x Due to the heinousness of the crime, and in view of *People v. Jugueta*, where this Court increased the award of civil indemnity, moral damages, and exemplary damages, we exercise our judicial prerogative and increase the damages to ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages, for each of the offenses for which accused-appellant is convicted.

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

LEONEN, *J.*:

In an Information dated November 28, 2002, accused-appellant King Rex Ambatang (Ambatang) was charged with the murder[1] of 60-year-old Ely Vidal (Vidal) as follows:

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[1] REV. PEN. CODE, Art. 248 provides:

Murder. - Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusión temporal* in its maximum period to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

That, on or about the 17th day of October, 2002, in the Municipality of Taguig City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill and with the use of a knife, a deadly weapon, did, then and there wilfully, unlawfully and feloniously assault and stab ELY VIDAL y PELEJO, hitting the latter in different parts of his body, thereby inflicting upon him fatal injuries which caused his instantaneous death, the said killing having been attended by the qualifying circumstances of treachery, evident premeditation and abuse of superior strength which qualify such killing to murder, aggravated by the circumstances of insult and disregard of the respect due the offended party due to his age and nighttime.

CONTRARY TO LAW.[2]

According to the prosecution, on October 17, 2002, at around 10:30 p.m., Jennifer Vidal Mateo[3] (Jennifer) was at the kitchen of their house in Taguig with her cousins when she heard a barrage of stones hurled at their house.[4] She peeked out of the window and saw Ambatang standing outside with a certain "Loui."[5] Melody Vidal Navarro (Melody) immediately called barangay tanods, who then immediately went to Ambatang's

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2. In consideration of a price, reward, or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[2] *Rollo*, pp. 2-3.

[3] Erroneously referred to as "Jennifer Mendoza" in the CA decision.

[4] *Id.* at 3.

[5] *Id.*

house, just across the Vidals' house.[6] While Ambatang's mother, Nicepura Ambatang, was speaking to a tanod, another tanod, Romeo Acaba (Acaba), saw Ambatang sharpening a knife in their kitchen.[7] Suddenly, Ambatang was nowhere to be found and appeared to have sneaked past the tanods before running towards the Vidals' house.[8] Later, Ambatang was on top of Vidal and was stabbing him repeatedly with a kitchen knife. Ambatang ran away but was apprehended by the tanods.[9] The victim was pronounced dead on arrival at Pasig Provincial Hospital.[10] Post-mortem findings issued by Dr. Rolando C. Victoria stated that the cause of death was stab wounds to the chest.[11]

Jennifer and Acaba testified that they personally saw the killing.[12] Vidal's wife, Carmelita Vidal (Carmelita), testified that after her husband was stabbed, the victim was able to get near her, embrace her, and tell her, "*Si King Rex sinaksak ako ng sinaksak*."[13]

In his defense, Ambatang claimed that he was at AMA Computer Learning Center on October 17, 2002 from 3:00 p.m. to 8:00 p.m., and did not get home until 9:30 p.m.[14] He stated that while he was doing the laundry, barangay tanods went to their house looking for a person named Louie.[15] He

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

[7] *Id*. at 4.

[8] *Id*.

[9] *Id*.

[10] *Id*.

[11] *Id*.

[12] CA *rollo*, p. 39.

[13] *Id*.

[14] *Id*. at 4.

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

then heard a noise from a commotion outside his house.[16] His mother and sister went out and instructed him to stay in the *sala* with his girlfriend, Gina Canapi.[17] Minutes later, he went out to see his friend Rey Lobo (Lobo), who lived roughly eight to ten meters from their house.[18] Lobo was not there, but he was able to speak to a certain Rael for a few seconds.[19] He then left Lobo's house and was arrested by the barangay tanods on his way home.[20]

In support of Ambatang's testimony, his mother and his girlfriend both testified that Ambatang was inside the house when the stabbing occurred.[21]

In the Decision[22] dated April 5, 2010, the Regional Trial Court, Branch 163, Pasig City found Ambatang guilty of murder and sentenced him to suffer the penalty of *reclusion perpetua*. It also ordered the payment of ₱50,000.00 as civil indemnity, ₱29,000.00 as actual damages, ₱50,000.00 as moral damages, and ₱30,000.00 as temperate or moderate damages, as well as costs and legal interest from the time the Information was filed until fully paid. The dispositive portion of the Decision reads:

> WHEREFORE, accused King Rex A. Ambatang is hereby found GUILTY beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code and, there being no mitigating or aggravating circumstance, is sentenced to suffer the penalty of reclusion perpetua and all the effects thereof as provided by law. He is further ordered to pay the victim's heirs Php50,000.00 as civil indemnity; Php29,000.00 as actual

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[16] *Id*. at 5.

[17] *Id*.

[18] *Id*.

[19] *Id*.

[20] *Id*.

[21] *Id*. at 5.

[22] CA *rollo*, pp. 36-41. The decision was penned by Judge Leili Cruz Suarez of Branch 163, Regional Trial Court of Pasig City.

damages; Php50,000.00 by way of moral damages; Php30,000.00 as temperate or moderate damages and to pay the costs, at the legal rate of interest from the time of the filing of the Information until fully paid.

SO ORDERED.[23]

On appeal, the Court of Appeals, in its assailed July 31, 2012 Decision,[24] upheld Ambatang's conviction. However, it modified the Regional Trial Court Decision to include an award of ₱30,000.00 as exemplary damages and deleted the award of ₱30,000.00 as temperate damages, there having already been an award of actual damages. The dispositive portion of the Decision reads:

WHEREFORE, the appeal is **DISMISSED**. The assailed Decision of the Regional Trial Court of Pasig City, Branch 163, Taguig City Station in Criminal Case No. 124748-H, is **AFFIRMED** with **MODIFICATIONS**. Accused-appellant King Rex Ambatang is found guilty beyond reasonable doubt of **MURDER** and is hereby sentenced to suffer the penalty of *reclusion perpetua*. Accused-appellant is further **ORDERED** to pay the heirs of Ely Vidal ₱50,000.00, as civil indemnity, ₱50,000.00, as moral damages, ₱29,000.00, as actual damages, and ₱30,000.00, as exemplary damages. The award of ₱30,000.00 as temperate damages is **DELETED.**

SO ORDERED.[25]

Ambatang then filed his Notice of Appeal.[26]

The Court of Appeals elevated the records of the case to this Court on March 8, 2013, pursuant to its Resolution dated

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[23] *Id*. at 41.

[24] *Rollo*, pp. 2-14. The decision was penned by Associate Justice Angelita A. Gacutan and concurred in by Associate Justices Fernanda Lampas Peralta and Francisco P. Acosta of the Tenth Division, Court of Appeals Manila.

[25] *Id*. at 13.

[26] *Id*. at 15.

September 24, 2012.[27] The Resolution gave due course to the Notice of Appeal filed by Ambatang.[28]

In the Resolution[29] dated April 10, 2013, this Court noted the records forwarded by the Court of Appeals and informed the parties that they could file their supplemental briefs.

On June 3, 2013, the Office of the Solicitor General filed a Manifestation,[30] on behalf of the People of the Philippines, stating that it would no longer file a supplemental brief.

On August 5, 2013, accused-appellant filed his Supplemental Brief.[31]

For resolution is the sole issue of whether accused-appellant Ambatang is guilty beyond reasonable doubt of murder.

It is settled that "factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal, unless the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance."[32] An examination of the records shows there is nothing that would warrant the reversal of the Decisions of the Regional Trial Court and of the Court of Appeals.

The testimonies of the prosecution witnesses are sufficient to convict accused-appellant. The Regional Trial Court and the Court of Appeals made definitive findings that Jennifer and Acaba made positive, unequivocal, and categorical identifications of accused-appellant as the person who stabbed the deceased Vidal.

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[27] *Id*. at 1.

[28] *Id*.

[29] *Id*. at 18.

[30] *Id*. at 19.

[31] *Id*. at 34-40.

[32] *People v. De Jesus*, 695 Phil. 114, 122 (2012) [Per *J*. Brion, Second Division] citing *People v. Jubail,* 472 Phil. 527, 546 (2004) [Per *J*. Carpio, First Division].

As against these, accused-appellant offered denial and alibi as defenses, which jurisprudence has long considered weak and unreliable. As noted by the Court of Appeals:

> Accused-appellant also offered alibi as a defense. He asserts that he was at home when the stabbing incident happened. We reiterate once more the oft-repeated rule that the defense of alibi is worthless in the face of positive identification. Thus:
>
> > It is well settled that positive identification by the prosecution witnesses of the accused as perpetrators of the crime is entitled to greater weight than their denials and alibis.
>
> True, accused-appellant's alibi was corroborated by Gina Canapi and Nicepura Ambatang. However, an alibi, especially when corroborated mainly by relatives and friends of the accused, is held by this Court with extreme suspicion for it is easy to fabricate and concoct. Thus, in *People v. Albalate*, the Supreme Court in rejecting accused's alibi explained:
>
> > The alibi proffered by the appellant must be rejected. Both the trial court and the Court of Appeals correctly noted that appellant failed to make any mention about this alleged alibi when he was placed on the witness stand. It was only when defense witness Florentina Escleto (Escleto) testified that this alibi cropped up. At any rate, the same deserves no consideration at all. Escleto claimed to be a friend of the appellant. It is settled jurisprudence that an alibi "becomes less plausible when it is corroborated by relatives and friends who may not be impartial witnesses".
>
> Furthermore, for the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity. The excuse must be so airtight that it would admit of no exception. Where there is the least possibility of accused-appellant's presence at the crime scene, as in this case, the alibi will not hold water.
>
> In fine, the age-old rule is that the task of assigning values to the testimonies of witnesses and weighing their credibility is best left to the trial court which forms first-hand impressions as witnesses testify before it. It is thus no surprise that findings and conclusions

of trial courts on the credibility of witnesses enjoy, as a rule, a badge of respect, for trial courts have the advantage of observing the demeanor of witnesses as they testify. We thoroughly review the records of the case, including the transcript of stenographic notes and we find no cogent reason to overturn the probative value given by the trial court on the testimonies of the prosecution witnesses. Hence, we sustain the guilty verdict against herein accused-appellant.[33]

In addition, accused-appellant attributed ill motive on the part of prosecution witness Carmelita. However, as the Court of Appeals explained, accused-appellant's conviction was not based on the testimony of Carmelita, but on the testimonies of eyewitnesses Jennifer and Acaba, "whose credibility was never assailed by accused-appellant."[34]

Accused-appellant assails the supposed inconsistencies in the statements of Jennifer and Acaba, that is, their statements on how accused-appellant left his residence and stabbed Vidal, and on the specific number of times that they saw Vidal get stabbed by accused-appellant.[35] These inconsistencies, however, are too minor. They are ultimately ineffectual in absolving accused-appellant of liability.

In *People v. Bagaua*:[36]

[W]e have time and again said that a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor

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[33] *Rollo*, pp. 8-10, citing *People v. Bracamonte*, 327 Phil. 160 (1996) [Per *J*. Hermosisima, Jr., First Division]; *People v. Tomas*, 658 Phil. 653 (2011) [Per *J.* Velasco, Jr., First Division]; *People v. Malones*, 469 Phil. 301 (2004) [Per *J*. Callejo, Sr., Second Division]; *People v. Albalate*, 623 Phil. 437 (2009) [Per *J.* Del Castillo, Second Division]; *People v. Delim*, 559 Phil. 771 (2007) [Per *J.* Garcia, First Division]; See *People v. Bracamonte*, 327 Phil. 160 (1996) [Per *J*. Hermosisima, Jr., First Division]; and *People v. Del Rosario*, 657 Phil. 637 (2011) [Per *J*. Nachura, Second Division].

[34] *Id*. at 7.

[35] *Id*. at 36-37.

[36] 442 Phil. 245 (2002) [Per *J*. Ynares-Santiago, First Division].

details and not actually touching upon the central fact of the crime do not impair the credibility of the witnesses. Instead of weakening their testimonies, such inconsistencies tend to strengthen their credibility because they discount the possibility of their being rehearsed.[37]

Regardless of Jennifer and Acaba's supposed discrepancies on how accused-appellant left his residence to stab Vidal and the exact number of times they saw him stab Vidal, what ultimately matters is that they witnessed how accused-appellant stabbed Vidal.

Accused-appellant also makes a brief reference (devoting a singular paragraph in his Supplemental Brief) to the circumstances of his apprehension and how the knife used in the stabbing was never recovered.[38] Again, these are too minor and do not suffice to absolve accused-appellant of liability. Finding an accused in possession of the weapon used to kill and apprehending him or her in such a manner that his or her participation in a murder is conspicuous, is not among the requisites to be convicted of murder.

Treachery is present to qualify Vidal's killing to murder. As pointed out by the Regional Trial Court:

> Accused employed treachery when he attacked the victim. This is shown by the suddenness of the attack against the unarmed victim, without the slightest provocation on the latter's part and opportunity to defend himself. Accused was a tall, young man with a sturdy physique. Armed with a sharp bladed weapon, he attacked and repeatedly stabbed the victim who was at that time sixty years old and inferior in size and built compared to him.[39]

Thus, this Court resolves to dismiss accused-appellant's appeal for failure to sufficiently show reversible error in

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[37] *Id*. at 255, citing *People v. Givera*, 402 Phil. 547, 566 (2001) [Per *J*. Mendoza, Second Division].

[38] *Rollo*, p. 37.

[39] CA *rollo*, pp. 40-41.

the challenged Decision to warrant the exercise of this Court's appellate jurisdiction.

Due to the heinousness of the crime, and in view of *People v. Jugueta*,[40] where this Court increased the award of civil indemnity, moral damages, and exemplary damages, we exercise our judicial prerogative and increase the damages to ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages, for each of the offenses for which accused-appellant is convicted.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 04485 is **AFFIRMED** with **MODIFICATION**. We find accused-appellant King Rex A. Ambatang **GUILTY** beyond reasonable doubt of the crime of murder, defined and penalized under Article 248 of the Revised Penal Code, as amended. He is **SENTENCED** to suffer the penalty of *reclusion perpetua* without eligibility for parole, with all the accessory penalties provided by law, and to pay the heirs of Ely Vidal the amounts of ₱100,000.00 as indemnity for his death, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages.

All monetary awards for damages shall earn interest at the legal rate of six percent (6%) per annum from the date of the finality of this judgment until fully paid.

SO ORDERED.

Carpio (*Chairperson*), *Reyes,** and *Martires, JJ.,* concur.

Mendoza, J., on official leave.

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[40] G.R. No. 202124, April 5, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/202124.pdf> [Per *J.* Peralta, *En Banc*].

* Designated additional member per Raffle dated March 29, 2017.

SECOND DIVISION

[G.R. No. 206103. March 29, 2017]

LYDIA LAVAREZ, MARGARITA LAVAREZ, WILFREDO LAVAREZ, GREGORIO LAVAREZ, LOURDES LAVAREZ-SALVACION, NORLIE LAVAREZ,* G.J. LAVAREZ, GIL LAVAREZ, and GAY NATALIE LAVAREZ, *petitioners,* **GODOFREDO LAVAREZ, LETICIA LAVAREZ, LUIS LAVAREZ, REMEDIOS V. ZABALLERO, JOSEPHINE V. ZABALLERO, FERNANDO V. ZABALLERO, VALENTA V. ZABALLERO, MILAGROS Z. VERGARA, VALETA Z. REYES, AMADO R. ZABALLERO, EMMANUEL R. ZABALLERO, and FLORENTINO R. ZABALLERO,** *petitioners, vs.* **ANGELES S. GUEVARRA, AUGUSTO SEVILLA, JR., ASTERIA S. YRA, ANTONIO SEVILLA, ALBERTO SEVILLA, ADELINA S. ALVAREZ, ARISTEO SEVILLA and the REGISTER OF DEEDS OF LUCENA CITY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; IN CIVIL CASES, THE ONE WHO ALLEGES A FACT HAS THE BURDEN OF PROVING IT AND A MERE ALLEGATION IS NOT EVIDENCE.— Basic is the rule of *actori incumbit onus probandi*, or the burden of proof lies with the plaintiff. In other words, upon the plaintiff in a civil case, the burden of proof never parts. Therefore, petitioners must establish their case by a preponderance of evidence, that is, evidence that has greater weight, or is more convincing than that which respondents offered in opposition to it. In civil cases, the one who alleges a fact has the burden of proving it and a mere allegation is not evidence.

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* Named Norlie Bibiera in the Complaint dated September 20, 1996 received by the RTC, Quezon City on October 16, 1996, *rollo*, pp. 71-84.

2. CIVIL LAW; CIVIL CODE; MODES OF ACQUIRING OWNERSHIP; DONATION; TO BE VALID, WHAT IS CRUCIAL IS THE DONOR'S CAPACITY TO GIVE CONSENT AT THE TIME OF THE DONATION; CONSENT IN CONTRACTS, REQUISITES.— A donation is an act of liberality whereby a person disposes a thing or right gratuitously in favor of another, who, in turn, accepts it. Like any other contract, agreement between the parties must exist. Consent in contracts presupposes the following requisites: (1) it should be intelligent or with an exact notion of the matter to which it refers; (2) it should be free; and (3) it should be spontaneous. The parties' intention must be clear and the attendance of a vice of consent, like any contract, renders the donation voidable. In order for a donation of property to be valid, what is crucial is the donor's capacity to give consent at the time of the donation. Certainly, there lies no doubt in the fact that insanity or unsoundness of the disposing mind impinges on consent freely given. However, the burden of proving such incapacity rests upon the person who alleges it. If no sufficient proof to this effect is presented, capacity will be presumed.

3. REMEDIAL LAW; EVIDENCE; TESTIMONIAL EVIDENCE; OPINION OF EXPERT WITNESS; MAY NOT BE ARBITRARILY REJECTED AND MAY BE CONSIDERED BY THE COURT IN VIEW OF ALL THE FACTS AND CIRCUMSTANCES IN THE CASE, AND WHEN COMMON KNOWLEDGE UTTERLY FAILS, IT MAY BE GIVEN CONTROLLING EFFECT.— [T]he testimony of expert witnesses must be construed to have been presented not to sway the court in favor of any of the parties, but to assist the court in the determination of the issue before it. Although courts are not ordinarily bound by expert testimonies, they may place whatever weight they may choose upon such testimonies in accordance with the facts of the case. The relative weight and sufficiency of expert testimony is peculiarly within the province of the trial court to decide, considering the ability and character of the witness, his actions upon the witness stand, the weight and process of the reasoning by which he has supported his opinion, his possible bias in favor of the side for whom he testifies, the fact that he might be a paid witness, the relative opportunities for study and observation of the matters about

which he testifies, and any other matters which deserve to illuminate his statements. The opinion of the expert may not be arbitrarily rejected; it is to be considered by the court in view of all the facts and circumstances in the case and when common knowledge utterly fails, the expert opinion may be given controlling effect. The problem of the credibility of the expert witness and the evaluation of his testimony is left to the discretion of the trial court whose ruling on such is not reviewable in the absence of abuse of discretion.

4. ID.; ID.; CREDIBILITY OF WITNESSES; IN ASSESSING THE CREDIBILITY OF WITNESSES, THE SUPREME COURT GIVES GREAT RESPECT TO THE EVALUATION OF THE TRIAL COURT FOR IT HAD THE UNIQUE OPPORTUNITY TO OBSERVE THE DEMEANOR OF WITNESSES AND THEIR DEPORTMENT ON THE WITNESS STAND.— Findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, without a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not be ignored. Absent any clear showing of abuse, arbitrariness, or capriciousness committed by the lower court, its findings of facts are binding and conclusive upon the Court. Settled is the rule that in assessing the credibility of witnesses, the Court gives great respect to the evaluation of the trial court for it had the unique opportunity to observe the demeanor of witnesses and their deportment on the witness stand, an opportunity that is unavailable to the appellate courts, which simply rely on the cold records of the case. The assessment by the trial court is even conclusive and binding if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence.

APPEARANCES OF COUNSEL

Rhaetia Marie C. Abcede for petitioners.
Salong Hernandez & Mendoza for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* assailing the Decision[1] of the Court of Appeals (*CA*) dated August 15, 2012 and its Resolution[2] dated February 25, 2013 in CA-G.R. CV No. 95543 which partly granted the appeal from the Decision[3] of the Regional Trial Court (*RTC*) of Lucena City, Branch 53, dated May 26, 2010 in Civil Case No. 1996-159.

The facts of the case at bar, as shown in the records, are as follows:

Rebecca Zaballero, Romulo Zaballero, Amando Zaballero, Raquel Zaballero-Sevilla, and Ramon Lavarez are siblings, the latter being a son from a former marriage. On June 7, 1996, Rebecca died intestate and without any issue, leaving several properties to be settled among her nearest kins – the sons and daughters of her siblings – who later became the parties in this case.

On October 16, 1996, Lydia Lavarez, Godofredo Lavarez, Lourdes Lavarez, Guido Lavarez, Norlie Bibiera, Gregorio Lavarez, Leticia Lavarez, Margarita Lavarez, Wilfredo Lavarez, Luis Lavarez, Remedios V. Zaballero, Josephine V. Zaballero, Fernando V. Zaballero, Valenta V. Zaballero, Milagros Z. Vergara, Valeta Z. Reyes, Amado R. Zaballero, Emmanuel R. Zaballero, and Florentino Zaballero filed an action for reconveyance, partition, accounting, and nullification of documents, with damages, against respondents Angeles S. Guevarra, Augusto Sevilla, Jr., Asteria S. Yra, Antonio Sevilla, Alberto Sevilla, Adelina S. Alvarez, and Aristeo Sevilla.

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[1] Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Amy Lazaro-Javier and Rodil V. Zalameda; concurring; *rollo*, pp. 35-49.

[2] *Id*. at 63-64.

[3] Penned by Judge Rodolfo D. Obnamia, Jr.; *id*. at 195-209.

For their defense, respondents alleged that there was nothing to partition since they were not aware of any real or personal properties which their aunt Rebecca had left behind. Said properties which were included in the complaint had already been validly donated to them by Rebecca, resulting to new Certificates of Title being issued in their names. Also, Guevarra claimed that she never took over the management and administration of Rebecca's properties so she could not be compelled to render an accounting of the income of said properties.

On May 26, 2010, the Lucena RTC granted the complaint, thus:

> WHEREFORE, of the foregoing, the Court orders:
>
> 1. Defendant Angeles S. Guevarra, as the administratrix of the late Rebecca Zaballero's property, to render an accounting how she managed the said properties of her principal, including but not limited, to income and expenses therefrom, bank deposits, from the time it came to her possession up to the filing of this case in Court on October 16, 1996.
>
> 2. Declaring the deeds of donation enumerated under page 3 of this decision, executed by Rebecca Zaballero, in favor of the defendants, a nullity for being tainted with vices of consent and reverting the same to the estate of the late Rebecca Zaballero.
>
> 3. Defendant Register of Deeds of Lucena City to cancel the said titles thereon under the names of the defendants to be partitioned by and between the parties in this case in accordance with law.
>
> SO ORDERED.[4]

Therefore, respondents elevated the case to the CA. On August 15, 2012, the appellate court partly granted the appeal and sustained the validity of the subject Deeds of Donation, to wit:

> **WHEREFORE**, premises considered, the instant appeal is **PARTLY GRANTED.** The assailed Deeds of Donation executed

[4] *Id*. at 209.

in May 1993 by deceased Rebecca Zaballero in favor of defendants-appellants are declared valid.

Defendant-appellant Angeles S. Guevarra is ordered to render an accounting on how she managed the real and personal properties of Rebecca Zaballero, from the time she took possession of the same up to the filing of the case on October 16, 1996.

SO ORDERED.[5]

Petitioners filed a motion for partial reconsideration, but the same was denied.[6] Of the original plaintiffs, only Lydia Lavarez, Margarita Lavarez, Wilfredo Lavarez, Gregorio Lavarez, Lourdes Lavarez-Salvacion, Norlie Lavarez, G.J. Lavarez, Gil Lavarez, and Gay Natalie Lavarez filed the instant petition.

The sole question in the instant case is whether or not Rebecca, on May 12, 1993, possessed sufficient mentality to make the subject deeds of donation which would meet the legal test regarding the required capacity to dispose.

Basic is the rule of *actori incumbit onus probandi*, or the burden of proof lies with the plaintiff. In other words, upon the plaintiff in a civil case, the burden of proof never parts. Therefore, petitioners must establish their case by a preponderance of evidence, that is, evidence that has greater weight, or is more convincing than that which respondents offered in opposition to it. In civil cases, the one who alleges a fact has the burden of proving it and a mere allegation is not evidence.[7]

A donation is an act of liberality whereby a person disposes a thing or right gratuitously in favor of another, who, in turn, accepts it. Like any other contract, agreement between the parties must exist. Consent in contracts presupposes the following requisites: (1) it should be intelligent or with an exact notion of the matter to which it refers; (2) it should be free; and (3)

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[5] *Id.* at 48-49. (Emphasis in the original)

[6] *Id.* at 63-64.

[7] *Heirs of Cipriano Reyes v. Calumpang, et al.*, 536 Phil. 795, 811 (2006).

it should be spontaneous. The parties' intention must be clear and the attendance of a vice of consent, like any contract, renders the donation voidable. In order for a donation of property to be valid, what is crucial is the donor's capacity to give consent at the time of the donation. Certainly, there lies no doubt in the fact that insanity or unsoundness of the disposing mind impinges on consent freely given. However, the burden of proving such incapacity rests upon the person who alleges it. If no sufficient proof to this effect is presented, capacity will be presumed.[8] Here, however, petitioners succeeded in discharging said heavy burden.

It is the contention of respondents that Rebecca still had full control of her mind during the execution of the deeds. The fact that she was already of advanced age at that time or that she had to rely on respondents' care did not necessarily prove that she could no longer give consent to a contract.

To determine the intrinsic validity of the deed of donation subject of the action for annulment, Rebecca's mental state/ condition at the time of its execution must be taken into account. Factors such as age, health, and environment, and the intricacy of the document in question, among others, should be considered. Rebecca's doctor during her lifetime, Dr. Bernardo Jorge Conde, who was presented as an expert witness, testified that Rebecca had been suffering from dementia, which was more or less permanent, and had been taking medications for years. The records would show that Rebecca lived in the family's ancestral house with respondents, and the old lady was dependent on their care, specifically that of Guevarra. During the execution of the deeds in question on May 12, 1993, Rebecca was already 75 years old, and was confined at the Philippine Heart Center in Quezon City. On June 7, 1996, she finally passed away.

The Deeds of Donation in favor of respondents likewise cover several properties of varying sizes, to wit:

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[8] *Catalan v. Basa*, 555 Phil. 602, 611 (2007).

1. a land (483 square meters) at *Barangay* (*Brgy.*) Gulang Gulang, Lucena under Transfer Certificate of Title (*TCT*) No. T-79056;
2. a property (33,424 square meters) at Brgy. Dumacaa, Lucena under TCT No. T-80090;
3. a land (4,611 square meters) in Lucena under TCT No. T-80091;
4. a land (9,456 square meters) in Lucena under TCT No. T-80092;
5. a property (34,376 square meters) in Lucena under TCT No. T-80086;
6. a property (17,448 square meters) under TCT No. T-80087;
7. a land (2,672 square meters) in Lucena under TCT No. T-80088;
8. a land (25,469 square meters) in Lucena under TCT No. T-80089;
9. a property (36,677 square meters) in Lucena under TCT No. T-80093; and
10. a land (13,488 square meters) in Lucena under TCT No. T-82430.

Putting together the abovementioned circumstances, that at the time of the execution of the Deeds of Donation covering numerous properties, Rebecca was already at an advanced age of 75, afflicted with dementia, not necessarily in the pinkest of health since she was then, in fact, admitted to the hospital, it can be reasonably assumed that the same had the effects of impairing her brain or mental faculties so as to considerably affect her consent, and that fraud or undue influence would have been employed in order to procure her signature on the questioned deeds. The correctness of the trial court's findings therefore stands untouched, since respondents never provided any plausible argument to have it reversed, the issue of the validity of donation being fully litigated and passed upon by the trial court.[9]

Petitioners claim, as confirmed by Dr. Conde, that the unsoundness of the mind of the donor was the result of senile dementia. This is the form of mental decay of the aged upon

[9] *Heirs of Dr. Favis v. Gonzales*, 724 Phil. 465, 479 (2014).

which wills or donations are most often contested. Senile dementia, usually called childishness, has various forms and stages. To constitute complete senile dementia, there must be such failure of the mind as to deprive the donor of intelligent action. In the first stages of the disease, a person may still possess reason and have will power.[10] It is a form of mental disorder in which cognitive and intellectual functions of the mind are prominently affected; impairment of memory is early sign. Total recovery is not possible since organic cerebral disease is involved.[11] It is likewise the loss, usually progressive, of cognitive and intellectual functions, without impairment of perception or consciousness, caused by a variety of disorders including severe infections and toxins, but most commonly associated with structural brain disease. It is characterized by disorientation, impaired memory, judgment and intellect, and a shallow labile effect.[12]

As to Dr. Conde's expert opinion, it is settled that the testimony of expert witnesses must be construed to have been presented not to sway the court in favor of any of the parties, but to assist the court in the determination of the issue before it.[13] Although courts are not ordinarily bound by expert testimonies, they may place whatever weight they may choose upon such testimonies in accordance with the facts of the case. The relative weight and sufficiency of expert testimony is peculiarly within the province of the trial court to decide, considering the ability and character of the witness, his actions upon the witness stand, the weight and process of the reasoning by which he has supported his opinion, his possible bias in favor of the side for whom he testifies, the fact that he might be a paid witness, the relative opportunities for study and observation of the matters about which he testifies, and any other matters which deserve to

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[10] *Torres v. Lopez*, 48 Phil. 772 (1926).

[11] *Black's Law Dictionary* (5th ed., 1979), p. 387.

[12] RTC Decision; *rollo*, p. 205; citing Stedman's *Medical Dictionary for the Health Professions and Nursing* (5th ed.), p. 389.

[13] *People v. Basite*, 459 Phil. 197, 206 (2003).

illuminate his statements. The opinion of the expert may not be arbitrarily rejected; it is to be considered by the court in view of all the facts and circumstances in the case and when common knowledge utterly fails, the expert opinion may be given controlling effect. The problem of the credibility of the expert witness and the evaluation of his testimony is left to the discretion of the trial court whose ruling on such is not reviewable in the absence of abuse of discretion.[14]

To support its ruling in favor of the validity of the deeds of donation, the CA cited the cases of *Catalan v. Basa*[15] and *Carrillo v. Jaojoco*.[16] In *Catalan*, the Court upheld the validity of the donation although the donor had been suffering from schizophrenia. In *Carrillo*, the contract of sale was upheld despite the seller having been declared mentally incapacitated after only nine (9) days from the execution of said contract. It is important to note, however, that in both cases, the Court merely sustained the rulings of the trial courts, which had been in a better position to appreciate the weight and value of the evidence and testimonies of the witnesses who had personally appeared before them.[17]

Findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, without a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not be ignored. Absent any clear showing of abuse, arbitrariness, or capriciousness committed by the lower court, its findings of facts are binding and conclusive upon the Court.[18] Settled

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[14] *Judge Paje v. Hon. Casiño*, G.R. No. 207257, February 3, 2015, 749 SCRA 39, 118.

[15] *Supra* note 8.

[16] 46 Phil. 957 (1924).

[17] *People v. CA*, G.R. No. 183652, February 25, 2015, 751 SCRA 675, 708.

[18] *Uyboco v. People*, G.R. No. 211703, December 10, 2014, 744 SCRA 688, 692.

is the rule that in assessing the credibility of witnesses, the Court gives great respect to the evaluation of the trial court for it had the unique opportunity to observe the demeanor of witnesses and their deportment on the witness stand, an opportunity that is unavailable to the appellate courts, which simply rely on the cold records of the case. The assessment by the trial court is even conclusive and binding if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence.[19] Here, the CA failed to show any presence of abuse, arbitrariness, or any clear disregard of evidence on the part of the trial court when it gave full credence to Dr. Conde's expert opinion.

Thus, after an extensive examination of the records of the instant case, the Court finds no cogent reason to depart from the lower court's conclusion that Rebecca Zaballero, on May 12, 1993, could not have had full control over her mental faculties so as to render her completely capable of executing a valid Deed of Donation.

WHEREFORE, IN VIEW OF THE FOREGOING, the Court **GRANTS** the petition and **REINSTATES** the Decision of the Regional Trial Court of Lucena City, Branch 53, dated May 26, 2010 in Civil Case No. 1996-159.

SO ORDERED.

Carpio (*Chairperson*), *Leonen,* and *Martires, JJ.,* concur.

Mendoza, J., on wellness leave.

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[19] *Cosme v. People*, 538 Phil. 52, 66 (2006).

SECOND DIVISION

[G.R. No. 212161. March 29, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JUANITO ENTRAMPAS,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY INCONSISTENCIES ON COLLATERAL AND MINOR MATTERS; INABILITY OF CHILD VICTIM TO RECALL THE PRECISE DATE AND TIME OF RAPE IS IMMATERIAL.— AAA's inability to recall the precise date and time of the rape is immaterial as these are not elements of the crime. Moreover, "rape victims are not expected to cherish in their memories an accurate account of the dates, number of times[,] and manner they were violated." Inconsistencies on minor details and collateral matters do not affect the substance, truth, or weight of the victim's testimonies. "[M]inor inconsistencies may be expected of [a girl] of such tender years ... who is unaccustomed to a public trial[,]" particularly one where she would recount such a harrowing experience as an assault to her dignity. The inconsistencies and contradictions in AAA's declarations are quite expected. The victim is a child less than 12 years old and, therefore, more likely to commit errors than teenagers or adults. Neither do these alleged discrepancies, not being elements of the crime, diminish the credibility of AAA's declarations.

2. ID.; ID.; ID.; NOT NEGATED BY FAILURE TO RESIST THE SEXUAL AGGRESSION AND TO IMMEDIATELY REPORT THE CRIME.— Her failures to resist the sexual aggression and to immediately report the incident to the authorities or to her mother do not undermine her credibility. The silence of the rape victim does not negate her sexual molestation or make her charge baseless, untrue, or fabricated. A minor "cannot be expected to act like an adult or a mature experienced woman who would have the courage and intelligence to disregard the threat to her life and complain immediately that she had been sexually assaulted." Force and intimidation

must be appreciated in light of the victim's perception and judgment when the assailant committed the crime. In rape perpetrated by close kin, such as the common-law spouse of the child's mother, actual force or intimidation need not be employed. "While [accused-appellant] was not the biological father of AAA ... [she] considered him as her father since she was a child." Moral influence or ascendancy added to the intimidation of AAA. It enhanced the fear that cowed the victim into silence.

3. CRIMINAL LAW; STATUTORY RAPE; AGE OF THE VICTIM UNDER 12 YEARS OLD ESTABLISHED BY HER BIRTH CERTIFICATE; PREVAILS ABSENT PROOF TO THE CONTRARY.— Absent proof to the contrary, accused-appellant's objection [on the age of the victim at the time of the commission of rape] must be set aside. A public document such as a birth certificate generally enjoys the presumption of regularity. Accused-appellant failed to present any evidence to overturn this legal presumption. x x x Thus, it is not for AAA to prove that the Certificate of Live Birth reflects the truth of the facts stated in it; rather, it is for accused-appellant to rebut the presumption that AAA's birth certificate sufficiently establishes her birth on November 11, 1991. Accused-appellant miserably failed to do this.

4. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE TRIAL COURT, RESPECTED.— "[W]hen a woman, especially a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed." Settled is the rule that "factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal, unless the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance."

5. CRIMINAL LAW; QUALIFIED RAPE; PROPER PENALTY AND DAMAGES IN CASE AT BAR.— Accused-appellant's acts amounted to statutory rape through carnal knowledge under Article 266-A(l)(d) of the Revised Penal Code, as amended. x x x Accused-appellant also committed the crime with the aggravating/qualifying circumstance that he was the common-law spouse of AAA's mother. Under Article 266-

> B (1) of the Revised Penal Code, as amended: Article 266-B. *Penalties*. - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*. ... The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances: 1) When the victim is under eighteen (18) years of age and the offender is a ... guardian ... or the common-law spouse of the parent of the victim[.] x x x For qualified rape through carnal knowledge, this Court modifies the award of civil indemnity from ₱75,000.00 to ₱100,000.00; moral damages from ₱75,000.00 to ₱100,000.00; and exemplary damages from ₱30,000.00 to ₱100,000.00. x x x All awards for damages are with interest at the legal rate of six percent (6%) per annum from the date of finality of this judgment 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

LEONEN, *J.*:

This is a tragic story resulting from an act of depravity: an 11-year old girl gave birth to a child after she was repeatedly raped by the common-law husband of her biological mother.

This is an appeal from a conviction for two (2) counts of statutory rape.

We emphatically affirm the conviction.

The setting of this case is in a rural sitio of Barangay Bawod, San Isidro, Leyte.[1] It is far from the urban centers where courts sit, but it is a place where the writs shaped by the rule of law can still provide succor.

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[1] *Rollo*, p. 7, Court of Appeals Decision.

Accused-appellant Juanito Entrampas (Entrampas) and BBB were common-law spouses.[2] They co-habited for eight (8) years, from 1995 to 2003. AAA, BBB's daughter from a previous relationship, lived with them.[3] She looked up to Entrampas as her adoptive father.

Entrampas, then 50 years old,[4] was a farmer who tilled a rice field half a kilometer away from their home.[5] BBB collected shrimps and shells for a living,[6] and would usually be at sea or by the beach from 4:00 p.m. to 7:00 p.m.[7] AAA was still in elementary school.[8]

Sometime in February 2003, at about 5:00 p.m., AAA arrived from school to cook for her family. She was interrupted by Entrampas and was asked to go to the room upstairs.[9] The 11-year old girl obeyed.[10]

"Once in the room, [Entrampas] forced AAA to lie down on the floor[.]"[11] She was warned by accused-appellant that if she shouted he would kill her. She was also warned that if she told her mother about what he was about to do, he would kill them.[12]

Entrampas took off the child's panty, undressed himself, and inserted his penis into her vagina. AAA felt pain as he penetrated her. Her vagina bled. She cried and pleaded him to stop.[13]

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[2] *Id*.

[3] *Id*.

[4] CA *rollo*, p. 39.

[5] *Rollo*, p. 7.

[6] *Id*.

[7] CA *rollo*, p. 36.

[8] *Rollo*, p. 7.

[9] CA *rollo*, p. 36.

[10] *Rollo,* p. 7.

[11] *Id*.

[12] *Id*.

[13] *Id*.

As he consummated the act, she noticed a knife on the wall within his reach. She became more fearful. After satisfying himself, he again warned the child that he would kill her and her mother if she informed anyone about the incident.[14]

She was left in the room sobbing.[15]

That evening, after arriving from the sea shore, BBB asked AAA why she was crying. Fearful of Entrampas' threats, AAA did not tell her mother.[16]

The incident occurred again a week later in February 2003.[17] Entrampas told AAA to lie down, penetrated her vagina, and then left her.[18] AAA stayed in the room upstairs, crying, until her mother came home at 10:00 p.m.[19]

Over the following months, Entrampas repeatedly raped AAA, who, out of fear, remained silent.[20]

In July 2003, BBB observed some changes in her daughter's body.[21] AAA's breasts had swollen, she had lost her appetite, and she was always sleeping.[22] By September 2003, AAA's belly had become noticeably bigger.[23] She was brought to the dispensary where her urine test was submitted for analysis.[24] AAA's pregnancy test yielded positive.[25]

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[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] *Id*. at 8.

[18] CA *rollo,* pp. 36-37.

[19] *Id*.

[20] *Rollo*, p. 8.

[21] *Id*.

[22] *Id*.

[23] *Id*.

[24] CA *rollo,* p. 37.

[25] *Rollo,* p. 8.

Fearing for her life, AAA refused to reveal the identity of the father of her child.[26] Neighbors suspected that Entrampas got her pregnant. BBB asked Entrampas, who, according to BBB, admitted that he was the father of AAA's child.[27]

On September 8, 2003, Entrampas and BBB went to BBB's brother, CCC, "to confess the crime he had committed against AAA."[28] Entrampas allegedly felt remorseful and told CCC to kill him to avenge AAA. CCC immediately reported the matter to the police.[29]

On November 3, 2003, AAA gave birth to a baby boy at the North Western Leyte District Hospital of Calubian, Leyte.[30]

Before the Regional Trial Court, Entrampas was charged with two (2) counts of qualified rape under the Revised Penal Code, as amended by Republic Act No. 8353 (Anti-Rape Law of 1997).[31] Two (2) separate informations were filed against him:

CRIMINAL CASE NO. CN-04-457

That sometime in the afternoon of February, 2003, in the Municipality of San Isidro, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the accused, actuated by lust, did, then and there, willfully, unlawfully and feloniously, through threat and intimidation, succeed in having carnal knowledge of [AAA], who was eleven (11) years old and the daughter of his common-law wife, without her consent and against her will.

CRIMINAL CASE NO. CN-04-458

That sometime in the evening of February, 2003, in the Municipality of San Isidro, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust,

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[26] *Id*.

[27] *Id*.

[28] *Id*.

[29] *Id*.

[30] *Id*.

[31] CA *rollo,* p. 33.

did, then and there, willfully, unlawfully and feloniously, through threat and intimidation, succeed in having carnal knowledge of [AAA], who was eleven (11) years old and the daughter of his common-law wife, without her consent and against her will.

CONTRARY TO LAW with the qualifying circumstances that the victim was under eighteen (18) years of age and the offender is the common-law spouse of the mother of the victim.[32]

Prosecution presented AAA's certificate of live birth, the laboratory report of AAA's pregnancy test, Dr. Robert C. Nicolas's certification dated October 26, 2004, and four (4) witnesses' testimonies.[33]

According to BBB, Entrampas was her live-in partner for eight (8) years.[34] BBB was at sea when the rape happened in February 2003.[35] Entrampas admitted to BBB that he impregnated AAA, and that they came to see CCC, to whom Entrampas also admitted the rape.[36]

The second prosecution witness, AAA, narrated how Entrampas raped her in February 2003, again one (1) week after, and in the succeeding months until she had a baby bump.[37] He gave her ₱10.00 for the first time he raped her.[38] She had her menstruation at 11 years old, while she was in Grade 5, and Entrampas knew this.[39] AAA had no boyfriend as she had no suitors.[40]

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[32] *Id*. at 33-34.

[33] *Id*. at 34-35.

[34] *Id*. at 35.

[35] *Id*.

[36] *Id*.

[37] *Id*. at 36–37.

[38] *Id*. at 37.

[39] *Id*.

[40] *Id*.

The third prosecution witness, Dr. Danilo Bagaporo (Dr. Bagaporo), verified that he was the Municipal Health Officer of San Isidro, Leyte.[41] On September 10, 2003, he administered AAA's pregnancy test, which yielded a positive result.[42]

The fourth prosecution witness, CCC, held that, on September 8, 2003, he was chopping wood in Sitio Cabgan, Brgy. Biasong, San Isidro, Leyte when Entrampas and BBB visited him.[43] Entrampas confessed the rape to CCC. At about 11:00 a.m. on the same day, CCC reported this to the barangay captain of Bawod, San Isidro. CCC was first referred to the house of the punong tanod, who was then not around. At noon, he proceeded to the police headquarters. The police investigated the incident and then incarcerated Entrampas.[44]

The defense's sole witness was Entrampas himself.[45] Entrampas claimed that he could not have raped AAA as he was often in the rice field.[46] He usually went to the rice field at 5:00 a.m. and headed home at about 5:00 p.m. or 6:00 p.m.[47]

He denied having raped AAA and having visited CCC with BBB.[48] He equally refuted confessing to CCC that he raped AAA and asking for his forgiveness.[49] He also contested the alleged inconsistent statements of AAA regarding the time the first and second rape happened, and whether she was awake or asleep before the sexual molestation.[50]

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[41] *Id*.

[42] *Id*.

[43] *Id*. at 38.

[44] *Id*.

[45] *Id*.

[46] *Id*. at 39.

[47] *Id*. at 38. The time stated that he would go to the field was mistakenly reported as 5:00 p.m.

[48] *Rollo,* p. 9.

[49] *Id*.

[50] *Id*. at 13-14.

On December 6, 2008, the Regional Trial Court found the accused guilty beyond reasonable doubt of two (2) counts of statutory rape. The dispositive portion of the Decision[51] reads:

> WHEREFORE, judgment is hereby rendered convicting the accused, Juanito Entrampas, in Criminal Cases [sic] Nos. CN-04-457 and CN-04-458, [guilty] beyond reasonable doubt of the crime of statutory rape as charged in the Informations and as defined and penalized in Article 299-A of the Revised Penal Code, and in accordance with Criminal Case No. CN-04-457, this Court is left with no alternative but to impose upon the accused, Juanito Entrampas, the penalty of Reclusion Perpetua with all the accessory penalties provided for by law, and to indemnify the victim, [AAA] the sum of Fifty Thousand (₱50,000.00) Pesos, without subsidiary imprisonment in case of insolvency and to pay Ten Thousand (₱10,000.00) Pesos, as moral damages, and to pay the cost, and in Criminal Case No. CN-04-458, the accused, Juanito Entrampas, is sentenced to suffer the penalty of Reclusion Perpetua, with all the accessory penalties provided for by law and to indemnify the victim, [AAA], the sum of Fifty Thousand (₱50,000.00) Pesos, without subsidiary imprisonment in case of insolvency and to pay Ten Thousand (₱10,000.00) Pesos, as moral damages and to pay the cost.
>
> The herein accused, being a detention prisoner, is entitled to a full credit of his preventive imprisonment in the service of his sentence.
>
> **SO ORDERED.**[52] (Emphasis in the original)

In the Decision[53] dated November 6, 2013, the Court of Appeals affirmed the ruling of the Regional Trial Court. It held that the inconsistencies alleged by Entrampas did not "touch upon the commission of the crime nor affect [the minor victim]'s credibility."[54] The dispositive portion of this Decision reads as follows:

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[51] CA *rollo,* pp. 33-44. The Decision was penned by Executive Judge Crescente F. Maraya, Jr. of Branch 11, Regional Trial Court, Calubian, Leyte.

[52] *Id*. at 44.

[53] *Rollo*, pp. 4-19. The Decision was penned by Associate Justice Ramon Paul L. Hernando and concurred in by Associate Justices Carmelita Salandanan-Manahan and Ma. Luisa C. Quijano-Padilla of the Twentieth (20th) Division of the Court of Appeals, Cebu City.

[54] *Id*. at 13-14.

WHEREFORE, in view of the foregoing premises, the Decision of the Regional Trial Court, Branch 11 of Calubian, Leyte, in Criminal Case Nos. CN-04-457 and CN-04-458 are hereby **AFFIRMED with the following MODIFICATIONS** that the award of civil indemnity and moral damages in both charges are increased to Php75,000.00 each. Further, accused-appellant is ordered to pay Php30,000.00 as exemplary damages as well as the rate of 6% per annum interest on all the damages awarded to be computed from the date of finality of the judgment until fully paid. No pronouncement as to costs.

SO ORDERED.[55] (Emphasis in the original)

On December 2, 2013, Entrampas appealed via a Notice of Appeal[56] before the Court of Appeals, which resolved to give it due course on March 25, 2014.[57]

For resolution is whether accused-appellant Juanito Entrampas is guilty beyond reasonable doubt of two (2) counts of statutory rape.

We affirm the finding of Entrampas' guilt.

The alleged inconsistencies "are collateral and minor matters which do not at all touch upon the commission of the crime nor affect [the minor victim]'s credibility."[58] AAA's inability to recall the precise date and time of the rape is immaterial as these are not elements of the crime.[59] Moreover, "rape victims are not expected to cherish in their memories an accurate account of the dates, number of times[,] and manner they were violated."[60]

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[55] *Id*. at 18.

[56] *Id*. at 20-22.

[57] *Id*. at 23.

[58] *Id*. at 14.

[59] *Id*.

[60] *People v. Lor*, 413 Phil. 725, 736 (2001) [Per *J*. Ynares-Santiago, *En Banc*], citing *People v. Zaballero*, 340 Phil. 371 (1997) [Per *J*. Panganiban, Third Division]; citing *People v. Sabellina*, G.R. No. 93514, December 1, 1994, 238 SCRA 492 [Per *J*. Bellosillo, First Division].

Inconsistencies on minor details and collateral matters do not affect the substance, truth, or weight of the victim's testimonies.[61] "[M]inor inconsistencies may be expected of [a girl] of such tender years . . . who is unaccustomed to a public trial[,]"[62] particularly one where she would recount such a harrowing experience as an assault to her dignity. The inconsistencies and contradictions in AAA's declarations are quite expected. The victim is a child less than 12 years old and, therefore, more likely to commit errors than teenagers or adults.[63]

Neither do these alleged discrepancies, not being elements of the crime, diminish the credibility of AAA's declarations. Jurisprudence has consistently given full weight and credence to a child's testimonies.[64] "Youth and immaturity are badges of truth and sincerity."[65] "Leeway should be given to witnesses who are minors, especially when they are relating past incidents of abuse."[66]

AAA, then only 11 years old, had no reason to concoct lies against petitioner. Her declarations are generally coherent and intrinsically believable. In *People v. Dimanawa*:[67]

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[61] *People v. Avanzado*, *Sr.*, 242 Phil. 163, 169 (1988) [Per *J.* Melencio-Herrera, Second Division].

[62] *Id*.

[63] *Id*.

[64] See *Pielago v. People,* 706 Phil. 460, 468-469 [Per *J.* Reyes, First Division]; *Campos v. People*, 569 Phil. 658, 671 (2008) [Per *J.* Ynares-Santiago, Third Division]; *People v. Galigao,* 443 Phil. 246, 260 (2003) [Per *J.* Ynares-Santiago, *En Banc*]; *Ricalde v. People*, G.R. No. 211002, January 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/211002.pdf> 8-10 [Per *J.* Leonen, Second Division].

[65] *People v. Dimanawa,* 628 Phil. 678, 689 (2010) [Per *J.* Nachura, Third Division].

[66] *People v. Dominguez,* 667 Phil. 105, 119 (2011) [Per *J.* Sereno (now Chief Justice), Third Division].

[67] *People v. Dimanawa*, 628 Phil. 678 (2010) [Per *J.* Nachura, Third Division].

[R]everence and respect for the elders is deeply rooted in Filipino children and is even recognized by law. Thus, it is against human nature for a . . . girl to fabricate a story that would expose herself, as well as her family, to a lifetime of shame, especially when her charge could mean the death or lifetime imprisonment of her own father.[68] (Citation omitted)

Her failures to resist the sexual aggression and to immediately report the incident to the authorities or to her mother do not undermine her credibility. The silence of the rape victim does not negate her sexual molestation or make her charge baseless, untrue, or fabricated.[69] A minor "cannot be expected to act like an adult or a mature experienced woman who would have the courage and intelligence to disregard the threat to her life and complain immediately that she had been sexually assaulted."[70]

Force and intimidation must be appreciated in light of the victim's perception and judgment when the assailant committed the crime.[71] In rape perpetrated by close kin, such as the common-law spouse of the child's mother, actual force or intimidation need not be employed.[72]

"While [accused-appellant] was not the biological father of AAA . . . [she] considered him as her father since she was a child."[73] Moral influence or ascendancy added to the intimidation of AAA. It enhanced the fear that cowed the victim into silence. Accused-appellant's physical superiority and moral influence depleted AAA's resolve to stand up against her foster father. The threats to her and her mother's lives, as well as the knife

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[68] *Id*. at 689.

[69] *People v. Lor,* 413 Phil. 725, 736 (2001) [Per *J*. Ynares-Santiago, *En Banc*].

[70] *Id*.

[71] *People v. Dimanawa*, 628 Phil. 678, 688 (2010) [Per *J*. Nachura, Third Division].

[72] *People v. Corpuz,* 597 Phil. 459, 467 (2009) [Per *J*. Carpio-Morales, Second Division].

[73] *Rollo*, p. 15.

within accused-appellant's reach, further prevented her from resisting her assailant. As accused-appellant sexually assaulted AAA, she cried and pleaded him to stop. Her failure to shout or tenaciously repel accused-appellant does not mean that she voluntarily submitted to his dastardly act.

Accused-appellant questioned the Regional Trial Court's appreciation of the age of the victim at the time of the commission of rape. He claimed that the birth certificate cast doubt on whether the victim was indeed below 12 years old in February 2003, when the offense was first committed. According to him, AAA's birth certificate should be questioned as it was registered late.[74] This allegation is speculative.

Absent proof to the contrary, accused-appellant's objection must be set aside. A public document such as a birth certificate generally enjoys the presumption of regularity.[75] Accused-appellant failed to present any evidence to overturn this legal presumption. In *Baldos v. Court of Appeals*:[76]

> Applications for delayed registration of birth go through a rigorous process. The books making up the civil register are considered public documents and are *prima facie* evidence of the truth of the facts stated there. As a public document, a registered certificate of live birth enjoys the presumption of validity. It is not for [the owner of the birth certificate] to prove the facts stated in his [or her] certificate of live birth, but for petitioners who are assailing the certificate to prove its alleged falsity.[77] (Citations omitted)

Thus, it is not for AAA to prove that the Certificate of Live Birth reflects the truth of the facts stated in it; rather,

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[74] The birth certificate was registered on July 9, 2002.

[75] *Baldos v. Court of Appeals*, 638 Phil. 601, 608 (2010) [Per *J*. Carpio, Second Division].

[76] *Baldos v. Court of Appeals*, 638 Phil. 601 (2010) [Per *J*. Carpio, Second Division].

[77] *Id*. at 608.

it is for accused-appellant to rebut the presumption that AAA's birth certificate sufficiently establishes her birth on November 11, 1991. Accused-appellant miserably failed to do this.

A careful examination of the records shows that there is nothing that would warrant a reversal of the Decisions of the Regional Trial Court and the Court of Appeals. "[W]hen a woman, especially a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed."[78]

Settled is the rule that "factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal, unless the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance."[79]

On the two (2) charges of qualified rape, AAA clearly and consistently communicated how accused-appellant threatened and forced her into having sexual congress with him. Sometime in February 2003, accused-appellant made AAA lie down on the floor and warned her that he would kill her and her mother if she called for attention.[80] He removed AAA's panty, undressed himself, and stripped her of her innocence.[81] AAA cried and pleaded him to stop.[82] She grew more fearful as she saw a knife within the assailant's reach.[83] Accused-appellant again threatened her and her mother's lives.[84] Terrified of accused-appellant's threats, AAA did not tell her mother what happened.[85]

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[78] *People v. Dimanawa*, 628 Phil. 678, 689 (2010) [Per *J.* Nachura, Third Division].

[79] *People v. De Jesus*, 695 Phil. 114, 122 (2012) [Per *J.* Brion, Second Division].

[80] *Rollo,* pp. 7-8.

[81] *Id*.

[82] *Id*.

[83] *Id*.

[84] *Id*.

[85] *Id*.

The incident occurred again a week later in February 2003.[86] Accused-appellant told her to lie down, penetrated her vagina, and then went outside.[87] AAA stayed in the room upstairs, crying, until BBB came home later that evening.[88] "For the succeeding months, [Entrampas] continued to rape AAA who [kept silent] out of fear."[89]

Accused-appellant's acts amounted to statutory rape through carnal knowledge under Article 266-A(1)(d) of the Revised Penal Code, as amended:

> Article 266-A. *Rape*, *When and How Committed*. Rape is committed –
>
> 1) By a man who shall have *carnal knowledge* of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> b) When the offended party is deprived of reason or otherwise unconscious;
>
> c) By means of fraudulent machination or grave abuse of authority; and
>
> d) When the *offended party is under twelve (12) years of age* or is demented**,** even though none of the circumstances mentioned above be present. (Emphasis supplied)

Accused-appellant also committed the crime with the aggravating/qualifying circumstance that he was the common-law spouse of AAA's mother. Under Article 266-B (1) of the Revised Penal Code, as amended:

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[86] *Id*. at 8.

[87] *Id*.

[88] CA *rollo,* pp. 36-37.

[89] *Rollo*, p. 8.

Article 266-B. *Penalties*. - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

. . . . . .

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a . . . guardian . . . or the common-law spouse of the parent of the victim[.]

As to the circumstances qualifying rape, the prosecution established that the victim was less than 12 years old when the incident happened in February 2003, and that the offender was her guardian.[90] AAA's Certificate of Live Birth proved her minority. AAA was accused-appellant's foster daughter. AAA and her mother, who was accused-appellant's former live-in partner, resided with accused-appellant in his house.

In September 2003, Dr. Bagaporo administered AAA's pregnancy test and found her to be with child.[91] AAA gave birth on November 3, 2003,[92] within nine (9) months from the date of the first rape in February 2003.

Meanwhile, CCC averred that accused-appellant admitted the crime to him, after which CCC reported the incident to the barangay captain and then to the police.[93]

As against these details and testimonies, all that accused-appellant offered in defense were denials and alibis, which jurisprudence has long considered weak and unreliable.[94]

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[90] *Id*. at 7.

[91] CA *rollo,* p. 37.

[92] *Rollo*, p. 8.

[93] CA *rollo,* p. 38.

[94] *People v. Liwanag*, *et al.*, 415 Phil. 271, 295 (2001) [Per *J.* Ynares-Santiago, First Division].

The Regional Trial Court, as affirmed by the Court of Appeals, properly found that the testimonies of AAA, BBB, CCC, and Dr. Bagaporo corroborated each other and supported the physical evidence. There was no showing that the witnesses for the prosecution had ill motives to testify against accused-appellant. Their testimonies are, therefore, accorded full faith and credence.

Raping a daughter destroys the purity of a father-daughter relationship. It shatters her dignity. It destroys her ability to trust her elders charged with her care. The selfish momentary pleasure of the father will torment her for life. In this case, it will also aggravate with the existence of the child of his daughter. This Court is at a loss for words to describe this evil. All it can do is to increase the amounts awarded to AAA in the hope that she will remember that the law is on her side.

In view of the depravity of the acts committed by accused-appellant against his 11-year old foster daughter, this Court increases the amounts awarded to AAA, in accordance with jurisprudence:

For qualified rape through carnal knowledge, this Court modifies the award of civil indemnity from ₱75,000.00 to ₱100,000.00; moral damages from ₱75,000.00 to ₱100,000.00; and exemplary damages from ₱30,000.00 to ₱100,000.00.[95]

WHEREFORE, in view of the foregoing premises, the Regional Trial Court Decision dated December 6, 2008 and Court of Appeals Decision dated November 6, 2013 are hereby **AFFIRMED with the following MODIFICATIONS:**

Judgment is hereby rendered finding the accused, Juanito Entrampas, in Criminal Case Nos. CN-04-457 and CN-04-458, guilty beyond reasonable doubt of the crime of statutory

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[95] *People v. Jugueta*, G.R. No. 202124, April 5, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/202124.pdf> 29-30 [Per *J.* Peralta, *En Banc*].

rape as charged in the informations and as defined and penalized in Article 266-A of the Revised Penal Code.

In Criminal Case No. CN-04-457, Juanito Entrampas is **SENTENCED** to *reclusion perpetua* with all the accessory penalties provided for by law. We modify the award of civil indemnity from ₱75,000.00 to **₱100,000.00**; moral damages from ₱75,000.00 to **₱100,000.00**; and exemplary damages from ₱30,000.00 to **₱100,000.00**,[96] without subsidiary imprisonment in case of insolvency.

Likewise, in Criminal Case No. CN-04-458, Juanito Entrampas is **SENTENCED** to *reclusion perpetua* with all the accessory penalties provided for by law. We modify the award of civil indemnity from ₱75,000.00 to **₱100,000.00**; moral damages from ₱75,000.00 to **₱100,000.00**; and exemplary damages from ₱30,000.00 to **₱100,000.00**,[97] without subsidiary imprisonment in case of insolvency.

All awards for damages are with interest at the legal rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.[98]

SO ORDERED.

Carpio (*Chairperson*), *Peralta,* and *Martires, JJ.,* concur.

Mendoza, J., on official leave.

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[96] *Id*.

[97] *Id*.

[98] *Ricalde v. People*, G.R. No. 211002, January 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/211002.pdf>16 [Per *J.* Leonen, Second Division].

FIRST DIVISION

[G.R. No. 214757. March 29, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **TIRSO SIBBU,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; PRESENT IN CASE AT BAR.— Treachery is present "when the offender commits any of the crimes against 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." x x x In this case, the evidence on record reveals that at the time of the shooting incident, Warlito, Ofelia, Trisha, and Bryan were at the porch of their house totally unaware of the impending attack. In addition, they were all unarmed thus unable to mount a defense in the event of an attack. On the other hand, appellant and his cohorts were armed. They also surreptitiously approached the residence of the victims. Appellant, in particular, wore camouflage uniform to avoid detection. Although Bryan was able to warn his family about the impending attack, it was too late for the victims to scamper for safety or to defend themselves. At the time Bryan became aware of appellant's presence, the latter was already in the vicinity of about five meters. In fine, appellant employed deliberate means to ensure the accomplishment of his purpose of killing his victims with minimal risk to his safety. There can be no other conclusion than that the appellant's attack was treacherous.

2. ID.; AGGRAVATING CIRCUMSTANCES; DWELLING; APPRECIATED AS THE VICTIMS WERE SHOT INSIDE THEIR HOUSE ALTHOUGH APPELLANT FIRED SHOTS FROM OUTSIDE THE HOUSE.— With regard to the aggravating circumstance of dwelling, the trial court correctly held: In the instant cases, the victims were at their azotea in their house when accused Tirso Sibbu fired shots at them. Tirso Sibbu was outside the house of the victims. Under these circumstances, the aggravating circumstance of dwelling can

be appreciated against Tirso Sibbu. Thus, the Supreme Court ruled: xxxx The aggravating circumstance of dwelling should be taken into account. Although the triggerman fired the shot from outside the house, his victim was inside. For this circumstance to be considered it is not necessary that the accused should have actually entered the dwelling of the victim to commit the offense; it is enough that the victim was attacked inside his own house, although the assailant may have devised means to perpetrate the assault from without x x x.

3. ID.; ID.; DISGUISE; APPRECIATED AS APPELLANT COVERED HIS FACE WITH A BONNET DURING THE SHOOTING INCIDENT.— The use of disguise was likewise correctly appreciated as an aggravating circumstance in this case. Bryan testified that the appellant covered his face with a bonnet during the shooting incident. There could be no other possible purpose for wearing a bonnet over appellant's face but to conceal his identity, especially since Bryan and appellant live in the same *barangay* and are familiar with each other.

4. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; NOT APPRECIATED AS APPELLANT WAS NOT ABLE TO PROVE THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE AT THE TIME AND SCENE OF THE CRIME.— As for the defense put up by the appellant that he was inside the house of his in-laws during the shooting, the Court is unconvinced by his denial and alibi. Aside from being the weakest of all defenses, appellant was not able to establish that it was physically impossible for him to be at the scene of the crime at the time the shooting incident happened. We have consistently ruled that "for the defense of alibi to prosper, the accused must prove not only that he was at some other place when the crime was committed, but also that it was physically impossible for him to be at the scene of the crime or its immediate vicinity through clear and convincing evidence."

5. CRIMINAL LAW; ATTEMPTED MURDER; APPRECIATED AS APPELLANT FIRED HIS FIREARM TO KILL BUT MISSED HIS TARGET VICTIM.— The Court also upholds appellant's conviction for attempted murder. Appellant commenced the commission of murder through overt acts such as firing his firearm at the residence of the victims but did not perform all the acts of execution which should produce murder

by reason of some cause other than his own spontaneous desistance. Appellant simply missed his target; he failed to perform all the acts of execution to kill Bryan. Appellant is therefore guilty of attempted murder.

6. ID.; ATTEMPTED MURDER WITH TWO AGGRAVATING CIRCUMSTANCES; PROPER PENALTY AND DAMAGES.— [T]he proper imposable penalty for attempted murder, and considering the attendant aggravating circumstances of dwelling and disguise, is four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to ten (10) years and one (1) day of *prision mayor,* as maximum. In addition, appellant is liable to pay civil indemnity, moral damages, and exemplary damages at ₱50,000.00 each. Finally, these monetary awards shall earn interest at the rate of 6% *per annum* from the date of finality of this Decision until fully paid.

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 resolves the appeal from the January 6, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 04127 which affirmed with modification the May 15, 2009 Decision[2] of Branch 11, Regional Trial Court (RTC) of Laoag City finding Tirso Sibbu (appellant) guilty beyond reasonable doubt of attempted murder in Criminal Case No. 11722 and of murder in Criminal Case Nos. 11721, 11723, and 11724.

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[1] CA *rollo,* pp. 272-292; penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Isaias P. Dicdican and Michael P. Elbinias.

[2] Records (Criminal Case No. 11721), pp. 459-502; penned by Judge Perla B. Querubin.

In Criminal Case No. 11722, appellant, together with Benny Barid (Benny) and John Does, was charged with attempted murder allegedly committed as follows:

That on or about the 6th day of December 2004, in Brgy. Elizabeth, Municipality of Marcos, Province of Ilocos Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with an unlicensed firearm, conspiring and confederating together and mutually helping one another, with intent to kill and treachery, did then and there willfully, unlawfully, and feloniously shot BRYAN JULIAN *y* VILLANUEVA, twice but missed, thereby commencing the commission of the crime of Murder directly by overt acts, but did not perform all the acts of execution which should have produced the said crime, by reason of some cause independent of his will, that is, accused are poor shooters, to the damage and prejudice of the above-named victim.

That the crime was committed [in] the dwelling x x x of the victim at nighttime and disguise was employed, with accused Sibbu wearing a bonnet on his face.[3]

In Criminal Case Nos. 11721, 11723 and 11724, and except for the names of the victims and the location of their gunshot wounds, appellant together with Benny and John Does, was charged with murder in three similarly worded Informations[4] allegedly committed as follows:

That on or about the 6th day of December 2004, in Brgy. Elizabeth, Municipality of Marcos, Province of Ilocos Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with an unlicensed firearm, conspiring and confederating together and mutually helping one another, with intent to kill and treachery, did then and there willfully, unlawfully, and feloniously shot [Trisha May Julian *y* Villanueva, Ofelia Julian *y* Bagudan, and Warlito Julian *y* Agustin], inflicting upon [her/him] gunshot wounds, which caused [her/his] instantaneous death, to the damage and prejudice of the heirs of the above-named victim.

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[3] Records (Criminal Case No. 11722), p. 1.

[4] *Id.* (Criminal Case No. 11721), p. 1, Criminal Case No. 11723, p. 1, Criminal Case No. 11724, p. 1.

That the crime was committed in the dwelling x x x of the victim at nighttime and disguise was employed, with accused Sibbu wearing a bonnet on his face.

During arraignment held on July 22, 2005, appellant pleaded not guilty to the charges against him. After pre-trial was conducted, trial on the merits followed. On May 31, 2008, appellant's co-accused Benny was arrested. However, his trial was held separately considering that the trial with respect to the appellant was almost finished with the prosecution already presenting rebuttal evidence.[5]

Version of the Prosecution

Bryan Julian (Bryan), the private complainant in Criminal Case No. 11722 and a common witness to all the cases, testified that between 6:30 and 7:00 p.m. of December 6, 2004, he was with his three-year old daughter, Trisha May Julian (Trisha), the victim in Criminal Case No. 11721; his mother Ofelia Julian (Ofelia), the victim in Criminal Case No. 11723; and his father, Warlito Julian (Warlito), the victim in Criminal Case No. 11724 in the *azotea* of his parents' house in *Barangay* Elizabeth, Marcos, Ilocos Norte when he saw from a distance of about five meters a person in camouflage uniform with a long firearm slung across his chest and a black bonnet over his head. When the armed man inched closer to the house, he tried to fix his bonnet thereby providing Bryan the opportunity to see his face; Bryan had a clear look at the armed man because there were Christmas lights hanging from the roof of their porch. Bryan recognized the armed man as the appellant.[6] Bryan also saw two men in crouching position at a distance of three meters away from the appellant. Fearing the worst, Bryan shouted a warning to his family. Appellant then fired upon them killing Trisha, Ofelia and Warlito.

Bryan ran inside the house where he saw his brother, Warlito Julian, Jr. (Warlito Jr.) coming out of the bathroom. Bryan then proceeded to the pigpen at the back of the house to hide.

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[5] *Id*. (Criminal Case No. 11721), p. 462.

[6] TSN, January 24, 2006, pp. 17-19.

Another prosecution witness, Eddie Bayudan (Eddie), testified that on December 6, 2004, he was by a well near his house when he heard gunshots coming from the house of Warlito and Ofelia. When he turned towards the direction of the gunshots, he saw a man about five meters away wearing a black bonnet and a long-sleeved camouflage uniform and holding a long firearm. He also saw another man crouching on the ground whom he recognized as the accused Benny. Eddie went inside his house for his and his family's safety. Afterwards, he heard Bryan shouting for help. When he went out to investigate, he saw the dead bodies of Warlito, Ofelia, and Trisha.

Warlito Jr. also testified that he heard gunshots coming from outside their house. When he went out of the bathroom, Bryan told him that appellant gunned down their parents and his niece. In his cross-examination, Warlito, Jr. claimed to have seen the appellant shooting at the porch of their house.[7]

Police Superintendent Benjamin M. Lusad (P/Supt. Lusad), chief of the provincial intelligence and investigation branch of Ilocos Norte, testified that at 7:00 a.m. of December 7, 2004, he conducted an investigation and an ocular inspection at the crime scene. He found bloodstains on the floor of the porch, the cadavers of the victims laid side by side in the sala, and bullet holes in the cemented portion at the front of the house below the window grill.[8] During his interview with Bryan, the latter pointed to appellant as the gunman.[9]

SPO1 Eugenio Navarro (SPO1 Navarro) also testified that he went to the crime scene together with Senior Police Inspector Arnold Dada, PO2 Danny Ballesteros, and SPO1 Lester Daoang, where they found 13 spent shells and slugs of a caliber .30 carbine. Police Superintendent Philip Camti Pucay who conducted the ballistic examination confirmed that the recovered shells and slugs were fired from a caliber .30 carbine.

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[7] TSN, July 4, 2006, p. 52.

[8] TSN, March 9, 2007, p. 36.

[9] *Id*. at 37.

Version of the Defense

The appellant interposed the defense of denial and alibi.

Appellant's father-in-law, Eladio Ruiz (Eladio), testified that on December 6, 2004, appellant did not leave their house because they had a visitor, Elpidio Alay (Elpidio); moreover, appellant tended to his child. Eladio stated that the distance between his house and Warlito's is approximately two kilometers and that it would take an hour to negotiate the distance by foot.[10]

Eufrecina Ruiz (Eufrecina), mother-in-law of the appellant, also testified that appellant had been living with them for two years before he was arrested.[11] She narrated that on December 6, 2004, appellant did not leave their house the whole night as he was tending to his sick child. She also claimed that they had a visitor who delivered firewood. Eufrecina alleged that appellant did not own any firearm and that he did not know Benny.

Elpidio testified that on December 6, 2004, he went to the house of Eladio to deliver a wooden divider.[12] He arrived at around 6:00 p.m. and left at 7:00 a.m. the following day. Elpidio stated that the appellant did not leave the house that night and that appellant was inside the house when he heard explosions.

Appellant denied the charges against him. He testified that on December 6, 2004, he never left the house of his in-laws because he was taking care of his sick son. He claimed to have heard the explosions but thought that those were sounds of firecrackers since it was nearing Christmas.[13] Appellant denied having any misunderstanding with the Julian family, or knowing Bryan and Benny personally, or possessing camouflage clothing.

Ruling of the Regional Trial Court

On May 15, 2009, the RTC rendered judgment finding appellant guilty beyond reasonable doubt of murder in Criminal

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[10] TSN, November 9, 2007, p. 76.

[11] TSN, January 4, 2008, p. 87.

[12] TSN, January 25, 2008, pp. 97-105.

[13] TSN, April 29, 2008, p. 71.

Case Nos. 11721, 11723, and 11724, and of attempted murder in Criminal Case No. 11722. The RTC gave credence to Bryan's positive identification of appellant as the person who shot at him and killed his daughter, mother and father. On the other hand, the RTC found appellant's defense of denial and alibi weak.

The dispositive part of the RTC's Decision reads:

WHEREFORE, judgment is hereby rendered as follows:

1) In Criminal Case No. 11721, accused TIRSO SIBBU is hereby declared GUILTY BEYOND REASONABLE DOUBT of the crime of murder. He is hereby sentenced to suffer the penalty of RECLUSION PERPETUA. Further, he is hereby ORDERED to pay the heirs of Trisha Mae Julian y Villanueva the [amounts] of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages;

2) In Criminal Case No. 11722, accused TIRSO SIBBU is hereby declared GUILTY BEYOND REASONABLE DOUBT of the crime of attempted murder. He is hereby sentenced to suffer the penalty of SIX (6) YEARS of prision correccional as minimum to TEN (10) YEARS of prision mayor as maximum.

3) In Criminal Case No. 11723, accused TIRSO SIBBU is hereby declared GUILTY BEYOND REASONABLE DOUBT of the crime of murder. He is hereby sentenced to suffer the penalty of RECLUSION PERPETUA. Further, he is hereby ORDERED to pay the heirs of Ofelia Julian *y* Bayudan the [amounts] of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages; and

4) In Criminal Case No. 11724, accused TIRSO SIBBU is hereby declared GUILTY BEYOND REASONABLE DOUBT of the crime of murder. He is hereby sentenced to suffer the penalty of RECLUSION PERPETUA. Further, he is hereby ORDERED to pay the heirs of Warlito Julian *y* Agustin the [amounts] of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.

In Criminal Case Nos. 11721, 11723 and 11724, accused TISO SIBBU is hereby ordered to pay the heirs of Trisha Mae Julian y Villanueva; Ofelia Julian *y* Bayudan; and Warlito Julian *y* Agustin the amount of ₱55,602.00 as actual damages.

SO ORDERED.[14]

Aggrieved by the RTC's Decision, appellant appealed to the CA.

Ruling of the Court of Appeals

On January 6, 2014, the CA affirmed the RTC's Decision with modification as follows:

> WHEREFORE, in light of the foregoing discussion, the appeal is DISMISSED. The Decision dated May 15, 2009, issued by the Regional Trial Court, Branch 11, Laoag City in Criminal Case Nos. 11721, 11722, 11723 and 11724, is AFFIRMED with MODIFICATION, as follows:
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> 1. In Criminal Case No. 11721, appellant Tirso Sibbu is hereby declared Guilty beyond reasonable doubt of the crime of murder. He is hereby sentenced to suffer the penalty of RECLUSION PERPETUA. Further, he is hereby ordered to pay the heirs of Trisha May Julian *y* Villanueva the [amounts] of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages, with interest at the legal rate of 6% percent from the finality of this judgment until fully paid;
>
> 2. In Criminal Case No. 11723, appellant Tirso Sibbu is hereby declared Guilty beyond reasonable doubt of the crime of murder. He is hereby sentenced to suffer the penalty of RECLUSION PERPETUA. Further, he is hereby ordered to pay the heirs of Ofelia Julian *y* Bayudan the [amounts] of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages, with interest at the legal rate of 6% percent from the finality of this judgment until fully paid; and
>
> 3. In Criminal Case No. 11724, appellant Tirso Sibbu is hereby declared Guilty beyond reasonable doubt of the crime of murder. He is hereby sentenced to suffer the penalty of RECLUSION PERPETUA. Further, he is hereby ordered to pay the heirs of Ofelia Julian *y* Bayudan the [amounts] of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages, with interest at the legal rate of 6% percent from the finality of this judgment until fully paid.

[14] Records (Criminal Case No. 11721), pp. 501-502.

No costs.

SO ORDERED.[15]

Dissatisfied with the CA's Decision, appellant elevated his case to this Court. On February 9, 2015, the Court issued a Resolution requiring the parties to submit their respective Supplemental Briefs. However, the appellant opted not to file a supplemental brief since he had exhaustively discussed his arguments before the CA. The Office of the Solicitor General also manifested that there was no longer any need to file a supplemental brief since the appellant did not raise any new issue in his appeal before this Court.[16]

Issues

The main issue raised in the Appellant's Brief concerns Bryan's identification of the appellant as the assailant. The appellant contends that the trial court erred in (1) giving undue credence to the testimony of the alleged eyewitness Bryan; and (2) in finding him guilty beyond reasonable doubt as charged because the prosecution failed to overthrow the constitutional presumption of innocence in his favor.[17] Further, appellant argues that the aggravating circumstances of treachery, dwelling, and use of disguise were not sufficiently established.

Our Ruling

The appeal is unmeritorious.

We uphold the findings of the RTC, which were affirmed by the CA, that Bryan positively identified appellant as the person who shot at him and killed Warlito, Ofelia, and Trisha. We have consistently ruled that factual findings of trial courts, especially when affirmed by the appellate court, are entitled to respect and generally should not be disturbed on appeal unless certain substantial facts were overlooked which, if considered,

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[15] CA *rollo,* pp. 291-292.

[16] *Rollo,* pp. 30-38.

[17] CA *rollo*, p. 161.

may affect the outcome of the case. After due consideration of the records of the case and the evidence adduced, the Court finds that the RTC and the CA did not err in their appreciation of the facts and evidence.

We find that Bryan was able to identify the appellant as the assailant in the shooting incident; there is no reason to doubt his positive testimony. As aptly observed by the RTC, Bryan's narration of how he was able to recognize the appellant was credible and convincing, to wit:

q You said somebody [shot] at you, your father, your mother, and your daughter while you were at the azotea of the house of your father on December 6, 2004. Did you see the person who shot at you, your father, your mother, and your daughter?
a Yes, ma'am.

x x x x x x x x x

q How far was [the gunman] when you saw him at the west side?
a Around five (5) meters away, ma'am.

q What was his position at the time you first saw him?
a He was at this position, ma'am. (Witness is showing as if a gun was slung on his neck) Then I told my family, "Somebody would shoot us, let us all run and hide," and then he shot [at] me twice, ma'am.

x x x x x x x x x

q How about [his] face x x x, can you x x x describe [it] to us?
a When he came near us he fixed his bonnet which covered one eye only that is why I recognized him; and even though his face was covered with [a] bonnet, I could still recognize him because I usually mingled with him, ma'am.

x x x x x x x x x

q You said you were able to recognize his face because you were familiar with him. Who was that person whom you recognized?
a Tirso Sibbu, ma'am.

q If this Tirso Sibbu is inside the courtroom today, would you be able to recognize him?
a Yes, ma'am.

q Kindly look around the courtroom and point to us if he is inside the courtroom?
a (Witness is pointing to a man wearing a black T-shirt with blue denim pants who when asked his name answered Tirso Sibbu)

q You said you were able to recognize the face of this man Tirso Sibbu because you are familiar with him? Can you tell us why you were familiar with him? What were the circumstances where you mingled with him?
a He was a jueteng collector and he came to our place three (3) times a day to get the bets, ma'am.

x x x x x x x x x

q Considering, Mr. Witness, that it was already x x x 6:30 [to] 7:00 in the evening, how were you able to see the face of Tirso Sibbu?
a There was a light in front of the azotea, ma'am.

q What was the light in your azotea you are referring to?
a Christmas lights that were not blinking, ma'am.[18]

x x x x x x x x x

q Now, Mr. Witness, how far [was the accused when you first noticed his presence]?
a More or less 5 meters, sir.

x x x x x x x x x

q By the way, that was the first time [you noticed the presence of] the accused. Was that in the same place you saw him fire his gun?
a He came nearer, sir.

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[18] TSN, November 29, 2005, pp. 5-7.

x x x x x x x x x

q Now, Mr. Witness, [how did you recognize the accused]?
a He fixed his bonnet [his] face was partly covered, sir.

q x x x That bonnet x x x covered the face, is that correct?
a Only one eye was covered so he fixed it sir.

q And the whole face was covered except one eye, is that what you want to impress the Honorable Court?
a The hole that was meant for his left eye went at his right eye so he stretched the bonnet and his face was uncovered that is why I recognized him, sir.

q You said that his face was uncovered, are you referring, to the whole face that was uncovered?
a Because of the stretching, the eyes and the nose were uncovered, sir.[19]

From Bryan's testimony above, it is clear that he was only five meters away from the appellant when the shooting incident happened. While the appellant was seen wearing a bonnet over his head, Bryan was able to get a glimpse of appellant's face when the latter fixed his bonnet. In addition, Christmas lights hanging from the roof of the porch provided illumination enabling Bryan to identify the appellant. Moreover, Bryan is familiar with the appellant's built, height, and body movements. As correctly pointed out by the CA:

It is equally of common knowledge that the eyes readily [adjust] to the surrounding darkness even if one stands in a lighted area, and the distance of five meters is not an impossible or improbable way as to preclude identification. Besides, Bryan's identification did not solely rely on facial recognition but also from appellant's body built and height, and the way he walked and moved, all proper standards of identification as corroborated in the testimony of an experienced police officer and PMA graduate Police Superintendent Benjamin

[19] TSN, January 24, 2006, pp. 15-18.

M. Lusad, chief of the provincial intelligence and investigation unit of Ilocos Norte.[20]

Based on the foregoing, the Court is convinced that the RTC and the CA were correct in holding that Bryan positively identified the appellant as the person who shot at him and killed Warlito, Ofelia, and Trisha.

Appellant also questions the RTC's appreciation of the aggravating circumstances of treachery, dwelling, and use of disguise. Citing *People v. Catbagan*,[21] appellant argues that "[t]reachery cannot be considered when there is no evidence that the accused had resolved to commit the crime prior to the moment of the killing; or that the death of the victim was the result of premeditation, calculation, or reflection."

We disagree. Treachery was correctly appreciated as qualifying circumstance in the instant case.

Treachery is present "when the offender commits any of the crimes against 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."[22]

The case of *Catbagan* has an entirely different factual context with the case at bar. In *Catbagan*, the accused was a police officer who investigated reported gunshots during an election gun ban in the residence of one of the victims. Prior to the shooting, *Catbagan* had no intention of killing anyone. It just so happened that during a heated exchange, *Catbagan* drew his firearm and shot the victims. In this case however, before the shooting incident, appellant was seen with a gun slung over his neck and a bonnet covered his face to conceal his identity. It is clear that appellant's purpose is to harm and kill his victims.

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[20] CA *rollo,* p. 287.

[21] 467 Phil. 1044, 1081-1082 (2004).

[22] REVISED PENAL CODE, Article 14, paragraph 16.

In this case, the evidence on record reveals that at the time of the shooting incident, Warlito, Ofelia, Trisha, and Bryan were at the porch of their house totally unaware of the impending attack. In addition, they were all unarmed thus unable to mount a defense in the event of an attack. On the other hand, appellant and his cohorts were armed. They also surreptitiously approached the residence of the victims. Appellant, in particular, wore camouflage uniform to avoid detection. Although Bryan was able to warn his family about the impending attack, it was too late for the victims to scamper for safety or to defend themselves. At the time Bryan became aware of appellant's presence, the latter was already in the vicinity of about five meters. In fine, appellant employed deliberate means to ensure the accomplishment of his purpose of killing his victims with minimal risk to his safety. There can be no other conclusion than that the appellant's attack was treacherous.

With regard to the aggravating circumstance of dwelling, the trial court correctly held:

> In the instant cases, the victims were at their azotea in their house when accused Tirso Sibbu fired shots at them. Tirso Sibbu was outside the house of the victims. Under these circumstances, the aggravating circumstance of dwelling can be appreciated against Tirso Sibbu. Thus, the Supreme Court ruled:
>
> x x x x x x x x x
>
> The aggravating circumstance of dwelling should be taken into account. Although the triggerman fired the shot from outside the house, his victim was inside. For this circumstance to be considered it is not necessary that the accused should have actually entered the dwelling of the victim to commit the offense; it is enough that the victim was attacked inside his own house, although the assailant may have devised means to perpetrate the assault from without x x x.[23]

The use of disguise was likewise correctly appreciated as an aggravating circumstance in this case. Bryan testified that the appellant covered his face with a bonnet during the shooting incident. There could be no other possible purpose for wearing

[23] Records (Criminal Case No. 11721), p. 498.

a bonnet over appellant's face but to conceal his identity, especially since Bryan and appellant live in the same *barangay* and are familiar with each other.[24]

As for the defense put up by the appellant that he was inside the house of his in-laws during the shooting, the Court is unconvinced by his denial and alibi. Aside from being the weakest of all defenses, appellant was not able to establish that it was physically impossible for him to be at the scene of the crime at the time the shooting incident happened. We have consistently ruled that "for the defense of alibi to prosper, the accused must prove not only that he was at some other place when the crime was committed, but also that it was physically impossible for him to be at the scene of the crime or its immediate vicinity through clear and convincing evidence."[25]

In this case, the crime was committed in the residence of the victims which is located within the same *barangay* where appellant resides. In fact, appellant's father-in-law testified that the distance between the crime scene and his house is "more or less 1 kilometer,"[26] or two kilometers as he later amended and that said distance could be traversed in one hour by foot.[27] Verily, appellant's alibi must fail for failure to show that it was physically impossible for him to be at the crime scene or its immediate vicinity at the time of its commission.

The Court also upholds appellant's conviction for attempted murder. Appellant commenced the commission of murder through overt acts such as firing his firearm at the residence of the victims but did not perform all the acts of execution which should produce murder by reason of some cause other than his own spontaneous desistance. Appellant simply missed his target; he failed to perform all the acts of execution to

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[24] TSN, November 29, 2005, p. 7.

[25] *People v. Garchitorena*, 614 Phil. 66, 89 (2009), citing *People v. Desalisa*, 451 Phil. 869 (2003).

[26] TSN, October 9, 2007, p. 56.

[27] TSN, November 9, 2007, p. 76.

kill Bryan. Appellant is therefore guilty of attempted murder. Unfortunately, Warlito, Ofelia and Trisha had to bear the brunt of appellant's firearm.

All told, appellant was correctly convicted of three counts of murder considering the qualifying circumstance of treachery and one count of attempted murder. Since two aggravating circumstances of dwelling and use of disguise attended the commission of the crime of murder, appellant should be sentenced to death in accordance with Article 63[28] of the Revised Penal Code. Under Article 248[29] of the Revised Penal Code, murder is punishable by *reclusion perpetua* to death. Thus under Article 63, the higher penalty should be imposed. However, because of the passage of Republic Act No. 9346, or *An Act Prohibiting the Imposition of Death Penalty in the Philippines*, the imposition of death penalty is now prohibited. The law provides that in lieu of the death penalty, the penalty of *reclusion perpetua* shall be imposed with no eligibility for parole. Accordingly, appellant should suffer the penalty of *reclusion perpetua* without eligibility for parole in lieu of the death penalty in Criminal Case Nos. 11721, 11723, 11724.

In *People v. Jugueta*,[30] the Court held that:

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[28] Art. 63. x x x.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

x x x x x x x x x

[29] Article 248. *Murder.* - Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

x x x x x x x x x

[30] G.R. No. 202124, April 5, 2016.

x x x [F]or crimes where the imposable penalty is death in view of the attendance of an ordinary aggravating circumstance but due to the prohibition to impose the death penalty, the actual penalty imposed is reclusion perpetua, the latest jurisprudence pegs the amount of ₱100,000.00 as civil indemnity and ₱100,0000.00 as moral damages. For the qualifying aggravating circumstance and/or the ordinary aggravating circumstances present, the amount of ₱100,000.00 is awarded as exemplary damages aside from civil indemnity and moral damages. Regardless of the attendance of qualifying aggravating circumstance, the exemplary damages shall be fixed at ₱100,000.00. x x x

x x x x x x x x x

Aside from those discussed earlier, the Court also awards temperate damages in certain cases. x x x Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victims suffered pecuniary loss although the exact amount was not proved. In this case, the Court now increases the amount to be awarded as temperate damages to ₱50,000.00.

x x x x x x x x x

In summary:

I. For those crimes like, Murder, Parricide, Serious Intentional Mutilation, Infanticide, and other crimes involving death of a victim where the penalty consists of indivisible penalties:

1.1 Where the penalty imposed is death but reduced to *reclusion perpetua* because of RA 9364:

a. Civil indemnity – ₱100,000.00
b. Moral damages – ₱100,000.00
c. Exemplary damages – ₱100,000.00

1.2 Where the crime committed was not consummated:

a. Frustrated:

i. Civil indemnity – ₱75,000.00
ii. Moral damages – ₱75,000.00
iii. Exemplary damages – ₱75,000.00

b. Attempted:

i. Civil indemnity – ₱50,000.00
ii. Moral damages – ₱50,000.00
iii. Exemplary damages – ₱50,000.00

Hence, in Criminal Case Nos. 11721, 11723, and 11724 where the appellant was convicted of murder, the crime being attended by the qualifying circumstance of treachery and by the aggravating circumstances of dwelling and disguise, we further modify the awards of civil indemnity, moral damages, and exemplary damages to ₱100,000.00 each for each case. Moreover, since the award of actual damages in the amount of ₱55,602.00 pertained to all three cases, the same should be modified to ₱50,000.00 for each case.

In Criminal Case No. 11722 for attempted murder, the RTC as affirmed by the CA imposed the penalty of six (6) years of *prision correccional* as minimum to ten (10) years as *prision mayor* as maximum.

In *People v. Jugueta*,[31] the Court *en banc* held as follows:

In view of the attendant ordinary aggravating circumstance, the Court must modify the penalties imposed on appellant. Murder is punishable by *reclusion perpetua* to death, thus, with an ordinary aggravating circumstance of dwelling, the imposable penalty is death for each of two (2) counts of murder. However, pursuant to Republic Act (RA) No. 9346, proscribing the imposition of the death penalty, the penalty to be imposed on appellant should be *reclusion perpetua* for each of the two (2) counts of murder without eligibility for parole. **With regard to the four (4) counts of attempted murder, the penalty prescribed for each count is *prision mayor*. With one ordinary aggravating circumstance, the penalty should be imposed in its maximum period, Applying the Indeterminate Sentence Law, the maximum penalty should be from two (10) years and one (1) day to twelve (12) years of *prision mayor*, while the minimum shall be taken from the penalty next lower in degree, *i.e., prision correccional*, in any of its periods, or anywhere from six (6) months and one (1) day to six (6) years. This Court finds it apt to impose**

[31] *Id*.

on appellant the indeterminate penalty of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to ten (10) years and one (1) day of *prision mayor*, as minimum, for each of the four (4) counts of attempted murder. (Emphasis supplied)

Applying the foregoing, the proper imposable penalty for attempted murder, and considering the attendant aggravating circumstances of dwelling and disguise, is four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to ten (10) years and one (1) day of *prision mayor*, as maximum. In addition, appellant is liable to pay civil indemnity, moral damages, and exemplary damages at ₱50,000.00 each. Finally, these monetary awards shall earn interest at the rate of 6% *per annum* from the date of finality of this Decision until fully paid.

WHEREFORE, the January 6, 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 04127 is **AFFIRMED with FURTHER MODIFICATIONS** as follows:

1. In Criminal Case No. 11721, appellant Tirso Sibbu is hereby declared guilty beyond reasonable doubt of the crime of Murder. He is sentenced to suffer the penalty of *reclusion perpetua* with no eligibility for parole. Further, he is ordered to pay the heirs of Trisha May Julian *y* Villanueva the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00, as moral damages, ₱100,000.00 as exemplary damages, and ₱50,000.00 as temperate damages, all with interest at the rate of 6% *per annum* from the date of finality of this Decision until fully paid.

2. In Criminal Case No. 11723, appellant Tirso Sibbu is hereby declared guilty beyond reasonable doubt of the crime of Murder. He is sentenced to suffer the penalty of *reclusion perpetua* with no eligibility for parole. Further, he is ordered to pay the heirs of Ofelia Julian *y* Bayudan the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00

as exemplary damages, and ₱50,000.00 as temperate damages, all with interest at the rate of 6% *per annum* from date of finality of this Decision until fully paid.

3. In Criminal Case No. 11724, appellant Tirso Sibbu is hereby declared guilty beyond reasonable doubt of the crime of Murder. He is sentenced to suffer the penalty of *reclusion perpetua* with no eligibility for parole. Further, he is ordered to pay the heirs of Warlito Julian, Sr. *y* Agustin the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱50,000.00 as temperate damages, all with interest at the rate of 6% *per annum* from date of finality of this Decision until fully paid.

4. In Criminal Case No. 11722, appellant Tirso Sibbu is hereby declared guilty beyond reasonable doubt of attempted murder and is sentenced to suffer the penalty of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to ten (10) years and one (1) day of *prision mayor*, as maximum. Further, he is ordered to pay Bryan Julian *y* Villanueva civil indemnity, moral damages, and exemplary damages each in the amount of ₱50,000.00, with interest at the rate of 6% *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

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

Perlas-Bernabe, J., on official leave.

SECOND DIVISION

[G.R. No. 216120. March 29, 2017]

PHILIPPINE TRUST COMPANY (also known as PHILTRUST BANK), *petitioner, vs.* **REDENTOR R. GABINETE, SHANGRILA REALTY CORPORATION and ELISA T. TAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW SHOULD BE RAISED IN PETITIONS FILED UNDER RULE 45; EXCEPTIONS.— The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45. This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt" when supported by substantial evidence. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court. x x x However, these rules do admit exceptions. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a 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 the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact 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 respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

2. ID.; EVIDENCE; FORGERY; MUST BE PROVED BY CLEAR, POSITIVE AND CONVINCING EVIDENCE.—

In *Mendoza v. Fermin*, this Court emphasized that a finding of forgery does not depend entirely on the testimony of handwriting experts and that the judge still exercises independent judgment on the issue of authenticity of the signatures under scrutiny, x x x As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence, the burden of proof lies on the party alleging forgery. One who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it. In this case, the respondent was not able to prove the fact that his signature was forged.

3. ID.; ID.; ID.; FOR NOTARIZED DOCUMENTS, HANDWRITING EXPERT'S OPINION FAILS AS AGAINST CATEGORICAL DECLARATION OF NOTARIES PUBLIC.— It is also worthy to note that the document being contested has been notarized and thus, is considered a public document. It has the presumption of regularity in its favor and to contradict all these, evidence must be clear, convincing, and more than merely preponderant. As also borne in the records, the notary public who notarized the Continuing Suretyship Agreement testified in court and confirmed that respondent signed the said document in her presence, x x x In *Libres, et al. v. Spouses Delos Santos, et al.* this Court ruled that a handwriting expert's opinion may not overturn the categorical declaration of the notaries public that the signatories signed a questioned document in their presence.

APPEARANCES OF COUNSEL

Jane D. Laplana-Suarez for petitioner.
Fortun and Santos Law Office for respondents.

D E C I S I O N

PERALTA, *J.*:

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated February 17, 2015 of petitioner Philippine Trust Company (*a.k.a. Philtrust Bank*)

that seeks to reverse and set aside the Decision[1] dated March 25, 2014 of the Court of Appeals (*CA*) in CA-G.R. CV No. 96009, which reversed the Decision[2] dated April 20, 2010 of the Regional Trial Court, Branch 33, Manila in a case for collection of sum of money filed by petitioner against respondents.

The facts follow.

Petitioner Philtrust, a domestic commercial banking corporation duly organized and existing under Philippine laws, filed a complaint on March 8, 2006 against Shangrila Realty Corporation, a domestic corporation duly organized under Philippine laws, together with Elisa Tan and respondent Redentor Gabinete alleging that petitioner granted Shangrila's application for a renewal of its bills discounting line in the amount of Twenty Million Pesos (₱20,000,000.00) as shown by a letter-advice dated May 28, 1997 bearing the conformity of Shangrila's duly-authorized representatives, Tan and respondent Gabinete. The said loan was conditioned on the execution of a Continuing Suretyship Agreement dated August 20, 1997, with Shangrila as borrower and respondent Gabinete and Tan as sureties, primarily to guaranty, jointly and severally, the payment of the loan. The following are the terms of the loan:

> a. The amount of Seven Million Two Hundred Thousand Pesos (₱7,200,000.00) evidenced by Promissory Note (PN) No. 7626 dated 20 August 1997 with maturity dated on 30 May 1998 and secured by a Real Estate Mortgage (*REM*) dated 6 July 1995 executed by Defendant Shangrila through its Excutive Vice-President and duly authorized representative, Defendant Tan, constituted over the properties covered by Transfer Certificate of Title (TCT) Nos. 220865-ind. And 220866-ind, of the Regisrty of Deeds for the City of Manila, both registered in the name of Defendant Shangrila. x x x

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[1] Penned by Associate Justice Victoria Isabel A. Paredes, with the concurrence of Associate Justices Isaias P. Dicdican and Michael P. Elbinias; *rollo*, pp. 54-75.

[2] Penned by Presiding Judge Reynaldo G. Ros; *id.* at 129-139.

b. A clean loan in the amount of Six Million Five Hundred Forty Thousand Pesos (₱6,540,000.00) evidenced by PN No. 7627 dated 20 August 1997 with maturity date on 30 May 1998, xxx Annex "F" x x x;

c. A clean loan in the amount of One Million Two Hundred Thousand Pesos (₱1,200,000.00) as evidenced by PN No. 7628 dated 20 August 1997 with maturity date on 30 May 1998, xxx Annex "G" xxx; and

d. A clean loan in the amount of Five Million Pessos (₱5,000,000.00) evidenced by PN No. 7581 dated 09 July 1997 with maturity date on 03 September 1997, xxx Annex "H" x x x;[3]

The following are the interest rates for the corresponding promissory notes:

a. PN No. 7626 – 23% per annum;
b. PN No. 7627 – 25% per annum;
c. PN No. 7628 – 25% per annum;
d. PN No. 7681 – 21% per annum.[4]

It is provided in the Continuing Suretyship Agreement that the sureties shall jointly and severally guarantee with the borrower the punctual payment at maturity of any and all instruments, loans, advances, credits and/or other obligations, and any and all indebtedness of every kind, due, or owing to Philtrust, and such interest as may accrue and such expenses as may be incurred by Philtrust.

Upon the maturity of the loan, Shangrila failed to pay Philtrust, rendering the entire principal loan, together with accrued interest and other charges, due and demandable. Philtrust repeatedly demanded for payment, but none of the respondents heeded the said demands.

Thus, Philtrust filed a Petition for Extrajudicial Foreclosure of the real estate mortgage wherein Philtrust was the highest bidder at the public auction with a bid of Six Million Pesos

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[3] *Rollo*, p. 56.

[4] *Id*.

(₱6,000,000.00). The breakdown of Shangrila's total obligation of ₱61,357,447.49, as of the date of the auction, is as follows:

a. PN No. 7626	-	₱22,015,535.90
b. PN No. 7627	-	20,159,092.93
c. PN No. 7628	-	3,741,835.86
d. PN No. 7581	-	15,440,982.80
		₱61,357,447.49[5]

Due to the insufficiency of the proceeds of the foreclosure sale to fully satisfy the obligation of Shangrila, the ₱6,000,000.00 proceeds of the foreclosure sale was applied to PN No. 7626 leaving a deficiency of ₱16,015,535.90 as of December 16, 2002, and despite repeated demands, respondents failed to fully settle the deficiency under PN No. 7626 and the clean loans under PN No. 7627, PN No. 7628 and PN No. 7581. As of February 28, 2006, respondent's total outstanding obligation to Philtrust is ₱50,425,059.20, inclusive of interest. Therefore, Philtrust filed the instant case and engaged the services of a counsel incurring the equivalent of 10% of the total amount due as attorney's fees per stipulation in the promissory notes.

Thereafter, on May 29, 2007, Philtrust filed a Motion to Declare Shangrila, Tan and respondent Gabinete in default on the ground that they failed to file an Answer despite service of summons by publication and, on June 26, 2007, the RTC declared them in default and allowed Philtrust to present its evidence *ex parte*.

The RTC, on January 4, 2008, dismissed the complaint without prejudice due to the failure of Philtrust to present its evidence *ex parte*. Thus, Philtrust filed a motion for reconsideration which was granted in an Order dated February 29, 2008.

To testify on the averments in the complaint, Philtrust presented Rosario Cruz Sy and Atty. Jane Laplana Suarez; and as of March 26, 2008, the total loan obligation of defendants amounted to ₱64,153,827.02. On April 10, 2008, Philtrust made a formal offer of its evidence.

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[5] *Id*. at 57.

In the meantime, respondent Gabinete, on April 18, 2005, filed a Motion to Lift Order of Default which was granted in an Order dated June 19, 2008. The same respondent was also allowed to cross-examine the witnesses of Philtrust. In his Answer, respondent Gabinete alleged that he ceased to be connected with Shangrila as of 1995 and as far as he knows, Shangrila never started doing business after it was incorporated in March 1994. He also specifically denied under oath the genuineness and due execution of the confirmation letter dated May 28, 1997. According to him, his signature of conformity is a forgery and he has nothing to do with the loans. He further added that the mortgagor in the real estate mortgage dated July 6, 1995, which secured PN No. 7626 dated August 20, 1997 was Tan and the properties mortgaged do not belong to Shangrila. He also averred that PN No. 7581 dated July 9, 1997 appears to be secured by a third party post-dated check and the silence and omission of Philtrust with regard to the identity of the third party evidences bad faith and disregard for the truth. He also asserted that the loan transactions or promissory notes are void because Tan did not have the authority to incur the loan for Shangrila or execute the loan documents. Gabinete claimed that when he received a demand for payment from Philtrust, he immediately replied and denied any participation in the transaction and informed Philtrust that his signature in the Continuing Surety Agreement had been forged, expressing his willingness and readiness to cooperate with any investigation and he did not receive further notices of demand from Philtrust and has no knowledge of the demands made on his co-respondents. Finally, he argued that his refusal to pay as demanded is justified because he had no participation in the loan transactions.

After the cross-examination and re-direct examination of Philtrust's witness and after respondent Gabinete testified, the latter, on March 3, 2009, filed a motion praying that the court direct the National Bureau of Investigation (*NBI*) to conduct an analysis of respondent Gabinete's signature appearing in the Continuing Suretyship Agreement which the RTC granted in its Order dated March 11, 2009.

A senior document examiner of the NBI, Efren Flores, testified that he evaluated and made a comparative examination of the submitted specimen and the document containing the questioned signature to determine whether they were written by one and the same person and after a thorough examination, it was found that the questioned signatures and the standard sample signatures were not written by one and the same person.

After respondent Gabinete filed his formal offer of evidence on September 28, 2009, the RTC rendered its Decision on April 20, 2010 in favor of the petitioner with the following dispositive portion:

> WHEREFORE, premises considered, defendants Shangrila Realty Corporation, Elisa Tan and Redentor Gabinete are jointly and severally ordered to pay the following amounts, to wit:
>
> 1. Sixty-Four Million One Hundred Fifty-Three Thousand Eight Hundred Twenty-Seven and 02/100 Pesos (₱64,153,827.02), representing the total deficiency obligation of the defendants under promissory note 7626 and their total outstanding obligations under the promissory notes 7627, 7628 and 7581 computes as of March 26, 2008, plus penalties and interests until fully paid;
>
> 2. Attorney's fees of 10% of the total amount due;
>
> 3. Costs of suit.
>
> SO ORDERED.[6]

Aggrieved, respondent Gabinete elevated the case to the CA. The CA found merit in the appeal and ruled in favor of respondent Gabinete. The dispositive portion of the CA's Decision dated March 25, 2014, reads as follows:

> **WHEREFORE**, premises considered, the Appeal is **GRANTED**. The Decision dated April 20, 2010 issued by the Regional Trial Court, Branch 33, Manila, in Civil Case No. 06-114599 is **AFFIRMED** with **MODIFICATION** that defendant-appellant Redentor Gabinete is held not liable to Philtrust Banking Company (also known as Philtrust

[6] *Id*. at 139.

Bank) for the loan transactions entered into by defendant Shangrila Realty Corporation, or jointly and severally liable to Philtrust Bank with Elisa Tan under the Continuing Surety Agreement.

SO ORDERED.[7]

According to the CA, the RTC erred in not giving due weight to the findings of the NBI Document Examiner based on its finding that the sample standard signatures submitted by respondent Gabinete to the NBI comprised only of his full signature and not his shortened signature. It further ruled that despite respondent Gabinete's failure to submit a sample of his shortened signature to the NBI, the RTC was not precluded from making a comparison of his questioned signature in the Continuing Suretyship Agreement to his shortened signature in the Articles of Incorporation and the By-laws of Shangrila. Hence, the CA concluded that there was no dearth of evidence to make an intelligent comparison of respondent Gabinete's shortened signature.

Hence, the present petition with the following grounds:

i.

THE APPELLATE COURT COMMITTED GRAVE AND SERIOUS ERROR IN GIVING CREDENCE TO THE FINDING OF THE NBI DOCUMENT EXAMINER, WHEN IT WAS ESTABLISHED THAT THE NBI DOCUMENT EXAMINER DID NOT COMPLY WITH THE REQUIREMENTS IN SIGNATURE ANALYSIS.

ii.

THE APPELLATE COURT COMMITTED GRAVE AND SERIOUS ERROR IN FINDING THAT THE SIGNATURE OF RESPONDENT GABINETE ON THE CONTINUING SURETYSHIP AGREEMENT IS FORGED.

iii.

THE APPELLATE COURT COMMITTED GRAVE AND SERIOUS ERROR IN DISREGARDING THE PRESUMPTION OF

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[7] *Id*. at 74. (Emphasis in the original)

REGULARITY ACCORDED TO THE CONTINUING SURETYSHIP AGREEMENT, AS A DULY NOTARIZED DOCUMENT.

iv.

THE APPELLATE COURT COMMITTED GRAVE AND SERIOUS ERROR IN FAILING TO TAKE INTO ACCOUNT THAT RESPONDENT GABINETE AGREED TO BE SOLIDARILY LIABLE WITH SHANGRILA AND MS. TAN WHEN HE SIGNED THE LETTER-ADVICE DATED MAY 28, 1997 (EXHIBIT "A" FOR THE PETITIONER).[8]

Petitioner argues that unlike the assessment and analysis made by the RTC on the testimony and findings of the NBI document examiner, the CA failed to recognize that the examination made by the NBI document examiner on the questioned signature of respondent Gabinete was tainted with serious flaws and irregularities that cast serious doubts on the veracity and accuracy of the signature examination and the result thereof. Petitioner also points out that the CA failed to consider the presumption of regularity accorded to the Continuing Suretyship Agreement as a duly notarized document. It further contends that the CA should have given credence on the testimony of the notary public who categorically stated that respondent Gabinete signed the Continuing Suretyship Agreement in her presence.

This Court, on April 6, 2015,[9] denied petitioner's petition for failure to sufficiently show that the CA committed any reversible error in the challenged decision and resolution as to warrant the exercise by this Court of its discretionary appellate jurisdiction. However, this Court, on August 26, 2015,[10] granted petitioner's motion for reconsideration and reinstated the present petition.

In its Comment/Opposition[11] dated June 24, 2015, respondent Gabinete asserts that the conflicting findings of the trial court

[8] *Id*. at 22.

[9] *Id*. at 182.

[10] *Id*. at 245-246.

[11] *Id*. at 229-244.

and the appellate court does not result to an automatic re-examination and re-evaluation of the evidence in the case. He also insists that the CA did not commit grave and serious error in giving credence to the findings of the NBI document examiner which ruled that the signature of respondent Gabinete in the Continuing Suretyship Agreement was forged. He further asserts that the presumption of regularity of a notarized document is a mere presumption that may be rebutted by evidence.

The petition is meritorious.

The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45.[12] This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt"[13] when supported by substantial evidence.[14] Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.[15]

This Court's Decision in *Cheesman v. Intermediate Appellate Court*[16] distinguished questions of law from questions of fact:

> As distinguished from a question of law – which exists "when the doubt or difference arises as to what the law is on a certain state of facts" – "there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts;" or when the "query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific

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[12] Sec. 1, Rule 45, Rules of Court.

[13] *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.,* 364 Phil. 541, 546 (1999) [Per *J.* Pardo, First Division].

[14] *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002) [Per *J.* Pardo, First Division]; *Tabaco v. Court of Appeals*, 239 Phil. 485, 490 (1994) [Per *J.* Bellosillo, First Division]; and *Padilla v. Court of Appeals,* 241 Phil. 776, 781 (1988) [Per *J.* Paras, Second Division].

[15] *Bank of the Philippine Islands v. Leobrera,* 461 Phil. 461, 469 (2003) [Per *J.* Ynares-Santiago, Special First Division].

[16] 271 Phil. 89 (1991) [Per *J.* Narvasa, Second Division].

surrounding circumstances, their relation to each other and to the whole and the probabilities of the situation."[17]

Seeking recourse from this court through a petition for review on *certiorari* under Rule 45 bears significantly on the manner by which this court shall treat findings of fact and evidentiary matters. As a general rule, it becomes improper for this court to consider factual issues: the findings of fact of the trial court, as affirmed on appeal by the Court of Appeals, are conclusive on this court. "The reason behind the rule is that [this] Court is not a trier of facts and it is not its duty to review, evaluate, and weigh the probative value of the evidence adduced before the lower courts."[18]

However, these rules do admit exceptions.[19] Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:[20]

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a 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 the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact 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 respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[21]

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[17] *Cheesman v. IAC, supra,* at 97-98.

[18] *Frondarina v. Malazarte*, 539 Phil. 279, 290-291 (2006) [Per *J.* Velasco, Third Division].

[19] *Remedios Pascual v. Benito Burgos, et al.*, G.R. No. 171722, January 11, 2016.

[20] 269 Phil. 225 (1990) [Per *J.* Bidin, Third Division].

[21] *Medina v. Mayor Asistio, Jr., supra*, at 232.

With contrasting findings of the RTC and the CA, this Court deems it proper to determine whether or not fraud was indeed proven in the present case.

In finding that the signature of the respondent was fraudulently acquired, the CA reversed the findings of the RTC with the following reasons:

x x x x x x x x x

The RTC erred in not giving due weight to the findings of the NBI Document Examiner based on its finding that the sample standard signatures submitted by Gabinete to the NBI comprised only of his full signature and not of his shortened signature. But, even if the RTC failed to give due weight to the findings of the NBI Document Examiner, the judge should have conducted his own independent examination of the questioned signatures in order to arrive at a reasonable conclusion as to its authenticity.

Despite Gabinete's failure to submit a sample of his shortened signature to the NBI, the RTC was not precluded from making a comparison of his questioned signature in the Continuing Suretyship Agreement to his shortened signature in the Articles of Incorporation, and in the By-laws of Shangrila. There was no dearth of evidence to make an intelligent comparison of Gabinete's shortened signature.

A "naked eye" examination of the questioned signature and the shortened signatures in the Article of Incorporation and By-laws of Shangrila shows two (2) significant differences, that: the "R" and the "G" in the questioned signature are not connected, while the "R" and "G" in the sample documents are connected; and (2) the RGabinete in Gabinete's standard signature are written continuously, while in the questioned signature, "Gabi" and "nete" are perceptive separate. These and the NBI document examiner's findings apply with equal force to the confirmation letter dated May 28, 1997.

The confluence of the following circumstances prove that Gabinete's signature in the Continuing Suretyship Agreement was forged, thus:

> First. Gabinete avers that: at the time the Continuing Suretyship Agreement was signed, he was no longer connected with Shangrila or with the accounting firm, Punongbayan and Araullo; the partnership apparently assigned him as paper incorporator and board director in order to secure SEC approval

of Shangrila's incorporation, only; and, at the time he was already working abroad with another employer, Ernst and Young. Although the RTC found that at the time of the signing of the Continuing Suretyship Agreement, Gabinete was in the Philippines, it would have been absurd for a person, who no longer had ties to Shangrila, to sign as a surety of its loan obligations.

Second. There was no Board Resolution or Corporate Secretary's Certificate designating Tan and/or Gabinete as authorized signatory for the loans, or renewal of loans, secured for and on behalf of Shangrila.

Third. Aside from the first promissory note, there were no collaterals securing the payment of the loans in violation of the accepted banking rules and practices.

Fourth. Although PN No. 7581 was secured by a Third party Post-dated Check, Philtrust failed to cash such post-dated check and deduct its proceeds from the existing obligation of Philtrust; Philtrust also failed to divulge the maker of such postdated check.

x x x x x x x x x.[22]

The CA cites the failure of the RTC to give due weight to the findings of the NBI Document Examiner and the failure of the judge to conduct his own independent examination of the questioned signatures in arriving at an erroneous conclusion. However, it is the CA that gravely committed an inaccurate appreciation of the facts and evidence presented in court.

In *Mendoza v. Fermin*,[23] this Court emphasized that a finding of forgery does not depend entirely on the testimony of handwriting experts and that the judge still exercises independent judgment on the issue of authenticity of the signatures under scrutiny, thus:

While we recognize that the technical nature of the procedure in examining forged documents calls for handwriting experts, resort to

[22] *Rollo,* pp. 70-73.

[23] 738 Phil. 429, 441 (2014).

these experts is not mandatory or indispensable, because a finding of forgery does not depend entirely on their testimonies. Judges must also exercise independent judgment in determining the authenticity or genuineness of the signatures in question, and not rely merely on the testimonies of handwriting experts. The doctrine in *Heirs of Severa P. Gregorio v. Court of Appeals*, is instructive, to wit:

> Due to the technicality of the procedure involved in the examination of forged documents, the expertise of questioned document examiners is usually helpful. However, resort to questioned document examiners is not mandatory and while probably useful, they are not indispensable in examining or comparing handwriting. ***A finding of forgery does not depend entirely on the testimony of handwriting experts. Although such testimony may be useful, the judge still exercises independent judgment on the issue of authenticity of the signatures under scrutiny.*** The judge cannot rely on the mere testimony of the handwriting expert. In the case of *Gamido vs. Court of Appeals* (citing the case of Alcon vs. Intermediate Appellate Court, 162 SCRA 833), the Court held that the authenticity of signatures
>
> > ... is not a highly technical issue in the same sense that questions concerning, *e.g.*, quantum physics or topology or molecular biology, would constitute matters of a highly technical nature. The opinion of a handwriting expert on the genuineness of a questioned signature is certainly much less compelling upon a judge than an opinion rendered by a specialist on a highly technical issue.
>
> A judge must therefore conduct an independent examination of the signature itself in order to arrive at a reasonable conclusion as to its authenticity and this cannot be done without the original copy being produced in court.

When the dissimilarity between the genuine and false specimens of writing is visible to the naked eye and would not ordinarily escape notice or detection from an unpracticed observer, resort to technical rules is no longer necessary and the instrument may be stricken off for being spurious. In other words, when so established and is conspicuously evident from its appearance, the opinion of handwriting experts on the forged document is no longer necessary.[24]

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[24] *Mendoza v. Fermin, supra*, at 441-442. (Emphasis in the original; citations omitted)

In this case, the RTC judge was able to exercise his independent judgment in determining the authenticity or genuineness of the signature in question, and not rely merely on the testimony of the NBI Document Examiner. Needless to say, the RTC's Decision is more in depth in its analysis of the absence of forgery than that of the CA's finding that forgery is present, thus:

x x x x x x x x x

Defendant, for his part, presented Mr. Efren Flores to prove that his signature appearing in the Suretyship Agreement was forged. However, after his testimony went under a gruelling cross-examination, this Court believes that it cannot give evidentiary weight to the findings of the document examiner.

As a matter of fact, even defendant himself admitted having used two sets of signatures in his transactions. One shortened signature of "RGabinete" and one full signature of "RedentorGabinete." To prove this point, defendant's signatures appearing on the Articles of Incorporation of Shangrila Realty showed that he used his shortened signature in incorporating the same.

But defendant insisted that his shortened signature appearing on the Suretyship Agreement was not his own. Mr. Efren Flores even made a conclusion to this effect:

> The questioned signatures of R. Gabinete, on one hand, and the standard/sample signatures of Redentor R. Gabinete, on the other hand, WERE NOT written by one and the same person. (Questioned Documents Report No. 246-509 (165-409) dated June 11, 2009)

However, a careful examination of the testimony of Efren Flores will show that the standard (sample) signatures appearing on the documents submitted to the NBI for examination do not contain the shortened signature of the defendant appearing on the Continuing Surety Agreement. The documents submitted to the NBI-Questioned Documents Division are as follows: a) Individual Income Tax Return, stamp dated March 17, 1994; b) Letter consisting of four (4) pages, dated August 17, 1994; c) Individual Income Tax Return, stamp dated March 3, 1995; d) Disclosure Statement of Loan/Credit Transaction, dated December 20, 1995; e) Deed of Sale of Motor Vehicle, dated 1996; f) Individual Income Tax Return, dated 1998; g) Plan application, dated November 16, 1998; h) Annual Income Tax Return, April 6,

2000; and i) SSS Salary Loan Official Receipt, stamp dated June 15, 2001. Not a single document reflected the shortened signature (as appearing on the Sureytyship Agreement) of herein defendant to enable the NBI Document Examiner to make a conclusive analysis of the signatures subject matter of the case.

Thus, Philtrust is correct in claiming that the standard (sample) signatures that were submitted to the NBI Questioned Documents Division could not be considered as sufficient standards for comparison with the signature of defendant appearing on the Continuing Suretyship Agreement. Moreso, even the specimen (sample) signatures show exhibit variations as admitted to by Mr. Flores. His testimony during cross is as follows:

> Atty. Salvador: Among the specimen signatures affixed on the submitted documents, Sir, are there differences among those signatures, the specimen signatures that were submitted to you?
>
> A: The specimen signatures show exhibit variations, Ma'am.
>
> Q: So, they also exhibit variations, Sir?
> A: Yes, ma'am.

The tests conducted by the NBI ran counter with the requirements as regards the qualification of specimen signatures for comparison purposes. This is even made apparent in the following testimony of Efren Flores, to wit:

> Q: Alright. In your own report you mentioned that there were ten (10) specimens which were submitted to you, what conclusion, if any, were you able to make with regard to the number of the individuals who executed the same. Were they made by just one person or by different persons?
>
> A: Before utilizing the submitted standard for comparison, it is being evaluated and collated whether they were written by one and the same person and we also consider the date of execution of all the documents submitted whether they were written before, during and after the date of the questioned document.
>
> Q: What is the requirement by your office with regard to the qualification of specimen signatures for purposes of comparison?
>
> A: For purposes of comparison, the specimen signature should be written in the same style [as] that of the questioned, they

should also be executed contemporaneously with the date of the questioned signature and they must be sufficient in number.

Contrary to the requirements of NBI, it is apparent that the specimen signatures ("RedentorGabinete") were not written in the same style as that of the questioned signature ("RGabinete") appearing on the Suretyship Agreement. They were also not executed contemporaneously with the date of the questioned signature. It may be recalled that no document was submitted by the defendant to the NBI bearing the year 1997, the same time when the Continuing Suretyship Agreement was executed.

Even Efren Flores acknowledged the important influence of passage of time to the handwriting of a person, thus –

Atty. Salvador: Sir, will you agree with me that the signature of a person vary in time?
A: Yes, ma'am.

Q: So, you will agree with me sir that the stroke of a particular letter of a handwriting of a person today will vary next year, will be different from the stroke of the same letter that you will write next year?
A: Yes, Ma'am. It will vary.

But still, defendant did not submit any document showing his signature as of 1997 to enable the NBI to analyze and compare the same with his signature appearing in the Suretyship Agreement.

Furthermore, this Court believes that the fact of forgery cannot be presumed simply because there are dissimilarities between the standard and the questioned signature. x x x.

x x x x x x x x x

[I]t cannot be concluded that the signature of defendant Redentor Gabinete appearing on the Continuing Suretyship Agreement is not genuine for lack of proper identification and a more accurate comparison with the standard (sample) signatures as presented in the NBI. At most, the findings of the NBI are not conclusive. What is more, even the document examiner failed to categorically state that there is an evidence of forgery in this case. Thus –

> Atty. Salvador: Am I correct sir that in your report you did not categorically stated (sic) that there was a finding of forgery in this case?
> A: No, Ma'am.[25]

The above findings clearly disprove the CA's blatant declaration that the RTC judge failed to conduct an independent examination on the questioned signature.

As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence, the burden of proof lies on the party alleging forgery.[26] One who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it.[27] In this case, the respondent was not able to prove the fact that his signature was forged.

It is also worthy to note that the document being contested has been notarized and thus, is considered a public document. It has the presumption of regularity in its favor and to contradict all these, evidence must be clear, convincing, and more than merely preponderant.[28] As also borne in the records, the notary public who notarized the Continuing Suretyship Agreement testified in court and confirmed that respondent signed the said document in her presence, thus:

ATTY. SALVADOR:

Q And what is your proof that there was compliance of this Terms and Conditions?
A There was a Continuing Suretyship Agreement signed by Mrs. Elisa Tan and Mr. Redentor Gabinete in favor of the bank.

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[25] *Rollo*, pp. 134-139. (Citations omitted)

[26] *Heirs of the Late Felix M. Bucton v. Go*, G.R. No. 188395, November 20, 2013, 710 SCRA 457, 465.

[27] *Spouses Alfaro v. Court of Appeals*, 548 Phil. 202, 216 (2007).

[28] *Domingo v. Domingo, et al.,* 495 Phil. 213, 222 (2005).

Q If shown to you the said Continuing Suretyship Agreement Madam Witness, will you be able to identify the same?
A Yes, Ma'am.

Q Showing you here Madam Witness a document entitled Continuing Suretyship Agreement dated August 20, 1997, can you please tell us the relation of this continuing suretyship agreement with the continuing suretyship agreement which you said were executed by the defendants?
A This is the Continuing Suretyship Agreement I referred to which was executed by Mr. Redentor Gabinete and Mrs. Elisa Tan to act as sureties for the loan of Shangrila Realty Corporation.

ATTY. SALVADOR:
Q Madam Witness, at the dorsal portion of this Continuing Suretyship Agreement appears several signatures beginning with the signature above the word Surety Elisa T. Tan, can you identify whose signature is this?
WITNESS:
A This is the signature of Elisa Tan a surety for Shangrila Realty Corporation.

Q And why do you know that this is the signature of Elisa T. Tan?
A It was signed in my presense.

Q Madam Witness, below the signature of Elisa T. Tan appears another signature above the typewritten name Redentor R. Gabinete, Surety, can you identify the signature Madam Witness?
A That is the signature of Mr. Redentor R. Gabinete, Ma'am.

Q And why do you know that this is the signature of Redentor R. Gabinete?
A It was also signed in my presence.[29]

In *Libres, et al. v. Spouses Delos Santos, et al.*[30] this Court ruled that a handwriting expert's opinion may not overturn

[29] TSN, March 26, 2008, pp. 13-16, *rollo*, pp. 45-46. (Emphasis ours)

[30] 577 Phil. 509, 521-522 (2008).

the categorical declaration of the notaries public that the signatories signed a questioned document in their presence, thus:

> Notarial documents executed with all the legal requisites under the safeguard of a notarial certificate is evidence of a high character. To overcome its recitals, it is incumbent upon the party challenging it to prove his claim with clear, convincing and more than merely preponderant evidence. A notarial document, guaranteed by public attestation in accordance with the law, must be sustained in full force and effect so long as he who impugns it does not present strong, complete, and conclusive proof of its falsity or nullity on account of some flaws or defects provided by law. Without that sort of evidence, the presumption of regularity, the evidentiary weight conferred upon such public document with respect to its execution, as well as the statements and the authenticity of the signatures thereon, stand.
>
> Against the bare denials and interested disavowals of the petitioners, the testimonies of the two notaries public must prevail. Their identical and categorical declarations that Libres signed the mortgage deeds in their presence present a more convincing picture of the actual events that transpired.
>
> We agree with the appellate court's ruling that petitioners' failure to present the two witnesses to the mortgage deeds, Pancho and Gloria Libres, is fatal to their cause. Their testimonies, if favorable to petitioners' cause, would have dissipated, by way of corroboration, the courts' justifiable supposition that petitioners' testimonies are merely self-serving. He who disavows the authenticity of his signature on a public document bears the responsibility to present evidence to that effect. Mere disclaimer is not sufficient. At the very least, he should present corroborating witnesses to prove his assertion. At best, he should present an expert witness. This is because as a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery.
>
> Petitioners, left with no other recourse than their self-serving declarations for lack of corroborating evidence, seek redemption through the lone testimony of the NBI handwriting expert, who understandably is the sole disinterested witness for the petitioners.

This, however, cannot suffice. Standing alone amidst the mass of evidence adduced by the respondents and their witnesses, **the NBI handwriting expert's opinion may not overturn the categorical declaration of the notaries public that Libres signed the mortgage deeds in their presence**. As we held in *Leyva v. Court of Appeals*, **the positive testimony of the attesting witnesses ought to prevail over expert opinions which cannot be mathematically precise but which, on the contrary, are subject to inherent infirmities. Besides, the handwriting expert's testimony is only persuasive, not conclusive**.[31]

In conclusion, it must always be remembered that forgery is not presumed but must be proved by clear, positive and convincing evidence by the party alleging it.[32]

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated February 17, 2015 of petitioner Philippine Trust Company is **GRANTED**. Consequently, the Decision dated March 25, 2014 of the Court of Appeals in CA-G.R. CV No. 96009 is **REVERSED** and **SET ASIDE** and the Decision dated April 20, 2010 of the Regional Trial Court, Branch 33, Manila is **AFFIRMED and REINSTATED.**

SO ORDERED.

Carpio (*Chairperson*), *Leonen,* and *Martires, JJ.,* concur.

Mendoza, J., on wellness leave.

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[31] *Libres, et al. v. Spouses Delos Santos, et al., supra*, at 520-522. (Citations omitted; emphasis ours)

[32] *Vda. de Mendez v. CA, et al.,* 687 Phil. 185, 194-195 (2012), citing *Bautista v. Court of Appeals,* 479 Phil. 787, 793 (2004).

FIRST DIVISION

[G.R. No. 197571. April 3, 2017]

CIVIL SERVICE COMMISSION, *petitioner, vs.* **CRISOSTOMO M. PLOPINIO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; CIRCUMSTANCES WHEN A PUBLIC OFFICER OR EMPLOYEE MAY BE DROPPED FROM THE ROLLS FOR ABSENCE WITHOUT LEAVE (AWOL) WITHOUT PRIOR NOTICE, ENUMERATED.— Rule VI, Section 63 of the Omnibus Rules on Leave in the Civil Service provides: Sec. 63. ***Effect of absences without approved leave.*** – **An official or employee who is continuously absent without approved leave for at least thirty (30) working days shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice.** x x x Rule 19, Sections 93 and 96 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) similarly state: x x x Absence Without Approved Leave 1. **An officer or employee who is continuously absent without official leave (AWOL) for at least thirty (30) working days shall be separated from the service or dropped from the rolls without prior notice.** x x x Based on current rules, a public officer or employee may be dropped from the rolls for AWOL without prior notice, under any of the following circumstances: (1) the public officer or employee was continuously absent without approved leave for at least 30 working days; or (2) the public officer or employee had established a scheme to circumvent the rule by incurring substantial absences, though less than 30 working days, three times in a semester, such that a pattern was readily apparent. Dropping from the rolls is not disciplinary in nature. It shall not result in the forfeiture of any benefit of the public official or employee concerned nor in said public official or employee's disqualification from reemployment in the government. Thus, the concerned public official or employee need not be notified or be heard.

2. ID.; ID.; ID.; ID.; THERE BEING NO FACTUAL BASIS THAT RESPONDENT HAD BEEN AWOL, HE COULD NOT SIMPLY BE DROPPED FROM THE ROLL IN CASE AT BAR.— [I]n this case, there was no proof that respondent was actually absent or did not report for work for 30 days or more. Respondent's AWOL was merely presumed from the fact that his DTRs for the periods of January to April 2002 and January to July 2003 were not on file with the COMELEC Personnel Department. x x x Taking into account the evidence submitted by respondent, together with PES Cariño's admission, Dir. Ibañez issued his Memorandum dated October 7, 2003, explicitly declaring that there was "the inability to fully establish a successive thirty-day absence without approved leave (AWOL) on the part of [respondent]" and withdrawing the recommendation in his earlier Memorandum dated August 20, 2003 to drop respondent from the rolls. Dir. Ibañez recommended instead that PES Cariño file an administrative complaint against respondent for absenteeism or other administrative disciplinary case as warranted.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Angel R. Ojastro III for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Assailed before the Court under Rule 45 of the Rules of Court is the Decision[1] dated July 12, 2011 of the Court of Appeals in CA-G.R. SP No. 99906, which (a) reversed and set aside Resolution No. 070560[2] dated March 19, 2007 and Resolution No. 071241[3] dated June 22, 2007 of petitioner Civil Service

[1] *Rollo*, pp. 28-40; penned by Associate Justice Florito S. Macalino with Associate Justices Juan Q. Enriquez, Jr. and Ramon M. Bato, Jr. concurring.

[2] CA *rollo*, pp. 53-62.

[3] *Id.* at 64-70.

Commission (CSC); and (b) ordered the reinstatement of respondent Crisostomo M. Plopinio to his former position at the Commission on Elections (COMELEC) and payment of his back salaries for a maximum period of five years. The CSC earlier affirmed COMELEC Resolution No. 03-0278[4] dated September 11, 2003 and Resolution No. 04-0019[5] dated February 10, 2004 dropping respondent from the rolls of employees of the COMELEC for his absences without official leave (AWOL) for a continuous period of at least 30 days.

COMELEC Proceedings

Respondent served as a COMELEC Election Officer III of Sipocot, Camarines Sur, prior to his separation from the service. A certain Alberto G. Adan (Adan) filed a letter-complaint against respondent alleging that because of respondent's frequent absences, respondent failed to act on Adan's petition for disqualification of a barangay candidate named Jessie V. Sanchez.

Acting Director IV Adolfo A. Ibañez (Dir. Ibañez), Personnel Department, COMELEC, conducted an investigation into Adan's letter-complaint against respondent and submitted a Memorandum dated August 20, 2003 to Commissioner Florentino A. Tuason, Jr. (Com. Tuason), COMELEC, who, in turn, forwarded the same to the COMELEC *en banc* for appropriate action. In its Resolution No. 03-0278 dated September 11, 2003, the COMELEC *en banc* adopted *in toto* Atty. Ibañez's findings and recommendation, thus:

> This pertains to the Memorandum dated August 29, 2003 of Commissioner Florentino A. Tuason, Jr., forwarding the Memorandum of Atty. Adolfo A. Ibañez, Acting Director IV, Personnel Department, relative to the letter-complaint of Mr. Alberto G. Adan against Election Officer [respondent], Sipocot, Camarines Sur, to act upon his petition for the disqualification of candidate Jessie V. Sanchez due to [respondent's] frequent absences and dropping of [respondent] from the rolls of Comelec employees.

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[4] *Rollo*, pp. 57-59.

[5] *Id.* at 44-49.

Memorandum of [Com.] Tuason -

"Respectfully forwarded is the attached Memorandum of Atty. Adolfo A. Ibañez, Acting Director IV, Personnel Department relative to the letter-complaint of Mr. Alberto G. Adan against [respondent] of Sipocot, Camarines Sur and the failure of [respondent] to act upon his petition for the disqualification of candidate Jessie V. Sanchez due to [respondent's] frequent absences.

For consideration of the Commission En Banc."

Memorandum of Director Adolfo A. Ibañez –

"This pertains to the letter-complaint of Mr. Alberto G. Adan against Election Officer [respondent] of Sipocot, Camarines Sur alleging the latter's failure to act on his petition to disqualify candidate Jessie V. Sanchez due to frequent absences.

Upon receipt of the complaint by the Office of the Chairman, Atty. Jaime Z. Paz, Head Executive Assistant of the same office gave [respondent] fifteen (15) days within which to submit his comment on the allegations as part of due process.

In his Answer dated July 30, 2003, [respondent] dismissed the instant complaint as baseless and unfounded. According to him, the issue had already been thoroughly explained before the Director of the Law Department and that pertinent documents had already been submitted to that department. Nonetheless, he reiterated in the said answer his comment to give clarity to the allegations of Mr. Adan.

Considering that it is no longer within the jurisdiction of his office to tackle the merits of the petition filed by Mr. Adan to disqualify a certain candidate, we will simply limit the issue on whether or not the alleged failure of [respondent] to act on the petition is due to his frequent unauthorized absences.

COMMENT/RECOMMENDATION

An update of [respondent's] records with the Personnel Department showed that he failed to file his daily time records for the months of January, February, March, and April 2002, although he managed to submit his May-December 2002 dtrs duly signed by the [Provincial Election Supervisor (PES)] of Camarines Sur. However, [respondent] again deliberately failed

to file his daily time records beginning January until present of the current year. Although he was notified to submit his dtrs immediately to avoid withholding of his salaries and other benefits, he has not complied to date. As a result thereof, his salaries were withheld effective July of this year. Copy of the memorandum issued to [respondent] is hereto attached and made an integral part hereof.

As the best evidence of his presence in his official work station, he should submit his daily time records to monitor the attendance in his workplace. Hence, if he failed to file his dtrs for a certain period, he is presumed to be absent during such time since there is no record evidencing that he reported for work during that period.

His non-filing of daily time records during the aforementioned period is construed as absence without official leave (AWOL) for at least thirty (30) calendar days warranting his separation from the service in consonance with the provision of Section 2 (2.1a), Rule XII of the Omnibus Rules on Appointment and other Personnel Actions.

Foregoing considerations, the undersigned respectfully recommends that [respondent] be dropped from the rolls of Comelec Employees effective January 1, 2003 and the salaries paid until June 30, 2003 be charged against his leave credits. However, the same shall be without prejudice to the filing of formal charge for violating reasonable office rules and regulations in view of his deliberate failure to submit his daily time records for the months of January to April 2002 and from January until present of the current year.

Respectfully submitted."

Considering the foregoing, the Commission RESOLVED, as it hereby RESOLVES, to approve the recommendation of Director Adolfo A. Ibañez to drop [respondent] from the rolls of Comelec employees effective January 1, 2003 and the salaries paid to him until June 30, 2003 be charged against his leave credits. However, the same shall be without prejudice to the filing of formal charge for violating reasonable office rules and regulations in view of his deliberate failure to submit his daily time records for the months

of January to April 2002 and from January until present of the current year.[6]

Com. Tuason then issued a Memorandum[7] dated October 7, 2003, directing respondent to immediately cease and desist from performing his official duties, based, among other grounds, on his unauthorized absences; and appointing an Acting Election Officer to serve the Municipality of Sipocot, Camarines Sur, in order not to jeopardize the voters' registration process at said Municipality.

Meanwhile, Dir. Ibañez also issued a Memorandum dated October 7, 2003[8] for the COMELEC *en banc*, withdrawing his earlier recommendation to drop respondent from the rolls of employees. Dir. Ibañez justified the change in his findings and recommendation, thus:

> This pertains to our previous recommendation to drop from the roll of Comelec employees [respondent], Sipocot, Camarines Sur, as embodied in our memorandum dated 20 August 2003, received by the Office of Commissioner Florentino A. Tuason, Jr., CIC for Region V, on 27 August 2003.
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> The above recommendation stemmed from a complaint filed by a certain Alberto G. Adan alleging [respondent's] failure to act on his petition to disqualify barangay candidate Jessie V. Sanchez due to frequent absences.

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[6] *Id.* at 57-59.

[7] CA *rollo*, p. 131. Com. Tuason also cited as other grounds respondent's consistent failure to implement and carry out fully the mandate of the COMELEC as contained in Resolution No. 6294 dated August 13, 2003 on the Continuing System of Registration, and Minute Resolution No. 02-0103 in the Matter of Memorandum of Com. Luzviminda G. Tancangco dated 23 July 2002 on the Resumption of Precinct Mapping Project, and other various resolutions related thereto; respondent's failure to submit various proper reports as required by the COMELEC; and respondent's refusal to honor the police clearances issued by the Philippine National Police Sipocot to serve as the basis of identification of voters, thereby causing difficulties and deprivation of residents/voters to register at the municipality of Sipocot, Camarines Sur.

[8] CA *rollo*, pp. 215-218.

Considering that it is no longer within our jurisdiction to tackle the merits of the petition for the disqualification of a certain barangay candidate, we limited our investigation on whether or not the alleged failure of [respondent] to act on the petition was due to frequent unauthorized absences.

Later verification from the records disclosed that [respondent] has no daily time record submitted with the Leave Section beginning January 2003 until present, thus, prompting Director Fe G. Campos to issue her 13 August 2003 memorandum reminding [respondent] to update his daily time records, otherwise his salary and other benefits will be withheld.

In the absence then of [respondent's] timely reply, we recommended for his dropping considering that under Civil Service Rules, his non-submission of daily time records for the said period is already construed as absence without official leave (AWOL) for at least thirty (30) days warranting his separation from the service.

Subsequently, or on August 29, 2003, we received Atty. Liza D. Zabala-Cariño's memorandum submitting therewith the unverified daily time records of [respondent] for the months of June and July 2003 with the justification why she refused to sign the daily time records. According to her, the daily time records revealed that [respondent] was out of his station on certain dates but the same reflected that he was on OB either to the Regional Trial Court or to the Comelec, Manila. These travels on OB, however, although not known to PES Cariño, are being contested by the latter allegedly for being unauthorized considering that the purpose for the said appearances were personal in nature.

On the other hand, [respondent], in answer to the 13 August 2003 memorandum of Director Fe Campos asserted that his duly accomplished daily time records from January 2003 to present were already submitted to the Office of the Provincial Election Supervisor with the corresponding date of receipt by the OPES.

Because of the foregoing superseding events, it appears that [respondent] was reporting, as he did report to office on certain days per his daily time records submitted to the OPES. One key issue however is that many DTR entries were being questioned by [respondent's] supervisor for being invalid or unauthorized considering his reported absences.

Consequently, because of the inability to fully establish a successive thirty-day absence without approved leave (AWOL) on the part of [respondent], the undersigned withdraws his former recommendation to drop from the rolls.

However, considering that [respondent] incurred a series of unauthorized or questioned absences, it is recommended that PES Cariño file an administrative complaint against [respondent] for absenteeism and other administrative disciplinary cases as warranted.

Finally, considering the problem that is now obtaining in the Office of the Election Officer of Sipocot, Camarines Sur and in the exigency of the service, it is recommended that [respondent] be immediately reassigned pursuant to the provisions of R.A. 8189. (Emphases supplied.)

Through his Memorandum[9] dated October 16, 2003 for the COMELEC *en banc*, respondent sought reconsideration of COMELEC Resolution No. 03-0278, as well as Com. Tuason's Memorandum dated October 7, 2003. Respondent lamented that the COMELEC *en banc* was misled by Dir. Ibañez's initial recommendation to drop him from the rolls of employees, which lacked factual and legal bases; and that he was not afforded due process as he was never confronted with any formal charge regarding his alleged absenteeism prior to COMELEC Resolution No. 03-0278. Respondent invited attention to the following documents attached to his Memorandum:

1. Memorandum For Atty. ADOLFO A. IBAÑEZ, Acting Director IV, Personnel Department This Commission, thru Atty. PIO JOSE S. JOSON, Deputy Executive Director for Operations, This Commission, and Hon. LUZVIMINDA G. TANCANGCO, Commissioner-In-Charge, Personnel Department, This Commission dated 04 August 2003, re SUBMISSION OF ALL OFFICE COMMUNICATION (INCOMING/OUTGOING) AND OTHER PERTINENT DOCUMENTS FOR THE PERIOD OF JANUARY TO MAY 2003 ESTABLISHING AND DELINEATING PARTICULAR OFFICE TRANSACTIONS WHICH CONSTITUTE CLARIFICATION AND THOROUGH EXPLANATION AGAINST THE MATTER OF

[9] *Id.* at 106-112.

WITHHOLDING THE SALARIES OF [respondent] BY THE PERSONNEL DEPARTMENT (Annex A);

2. Memorandum for Atty. LIZA ZABALA-CARIÑO, Acting Provincial Election Supervisor for Camarines Sur, dated March 5, 2002 re: SUBMISSION OF DAILY TIME RECORDS of [respondent] for the MONTHS OF JANUARY and FEBRUARY 2002 which was received on March 8, 2002 by Mrs. ROSITA NIEVES, Election Assistant, OPES, Camarines Sur (Annex B);

3. Memorandum for Atty. LIZA ZABALA-CARIÑO, Acting Provincial Election Supervisor For Camarines Sur, dated May 14, 2002 re: SUBMISSION OF DAILY TIME RECORDS of [respondent] for the MONTHS OF MARCH and APRIL 2002 which was received on May 17, 2002 by Mrs. ROSITA NIEVES, Election Assistant OPES, Camarines Sur (Annex C);

4. Certified true copy of the Daily Time Records (DTRs) of [respondent] for the months of March and April 2002 issued on January 1, 2003 by JESSICA M. VILLANUEVA, Personnel Department, COMELEC, Manila. (Annex D)[10]

According to respondent, the aforementioned documents proved:

1. that [respondent] had submitted his DTRs to Acting Provincial Elections Supervisor Atty. Liza Zabala-Cariño;

2. that it was Atty. Cariño who unjustifiably REFUSED to forward said DTRs to the Personnel Department of Director Ibañez;

3. that [respondent] had made several official communications both to Atty. Cariño and to Director Ibañez, copy furnished the concerned Commissioners, of the fact of [respondent's] submission of DTRs to Atty. Cariño and the unjustifiable refusal of Atty. Cariño to submit the same to the Personnel Department;

4. that the withholding of salaries of [respondent] is unreasonable and unfair;

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[10] *Id*. at 106-107.

> 5. and that despite those several communications, [respondent] was NEVER replied to by Atty. Cariño or the Personnel Department, and no action was ever done on his official requests.[11]

Respondent also pointed out that Com. Tuason's Memorandum dated October 7, 2003 was contrary to the Constitution, the Omnibus Election Code, and the COMELEC Rules of Procedure which provide that only the COMELEC, sitting *en banc* or by division, may relieve an officer or employee who, after due process, was found guilty of violating election laws or failing to comply with instructions, orders, decisions, or rulings of the Commission.

Respondent filed another Memorandum[12] dated January 6, 2004, for the COMELEC *en banc*, as his Supplemental Motion for Reconsideration of COMELEC Resolution No. 03-0278. Respondent argued that COMELEC Resolution No. 03-0278 had lost ground since it was based solely on Dir. Ibañez's recommendation to drop respondent from the rolls of employees effective January 1, 2003; but then Dir. Ibañez already issued his Memorandum dated October 7, 2003 withdrawing such recommendation. Respondent also reiterated that there was complete absence of due process in his case, both substantive and procedural, and that there was a grand scheme to illegally oust him from office. Hence, respondent moved that:

> Whoever might be liable for this injustice to [respondent], the memo of Dir. Ibañez withdrawing his prior recommendation that [respondent] be dropped from the rolls, effectively binds this Commission to IMMEDIATELY recall its September 11, 2003 Resolution No. 03-0278. This Commission is now duty-bound to reinstate [respondent] to the plantilla position, with full backwages from July 2003 up to the present when his salaries were withheld, including all benefits and privileges that should have accrued in [respondent's] favor had [respondent] not been dropped from the rolls. I and my family had suffered more that, and gravely enough.[13]

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[11] *Id*. at 107-108.

[12] *Id*. at 113-114.

[13] *Id*. at 113.

Acting on respondent's Supplemental Motion for Reconsideration, Atty. Pio Jose S. Joson (Joson), Deputy Executive Director for Operations (DEDO), COMELEC, issued a Memorandum[14] dated January 26, 2004, finding as follows:

> As averred in [respondent's] supplemental motion for reconsideration of subject Comelec resolution, he manifested that dropping him from the rolls of employees has lost ground considering that in Dir. Ibañez memorandum dated 07 October 2003, there was a withdrawal of his previous recommendation aforementioned because accordingly, it was not fully established that there was a successive 30-day absence without an approved application for leave on his part, attached as Annex "C." Truly, it could be said that on allegations alone of the mayor of Sipocot that [respondent] is rarely seen in his office at the Municipal building thus reneging in his duties as [Election Officer] thereat, PES Cariño deliberately left [respondent's] DTRs unsigned and undelivered to the Personnel Department, coupled with the fact that when the latter complained of such condition, the former forwarded some of his DTRs to the Personnel Department unsigned, claiming that she cannot attest to the fact that [respondent] did show up in his office on the time and date stated in his DTRs.
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> **Clearly, it was not [respondent's] fault that his DTRs never reached the Personnel. On allegations of his frequent absences, [respondent] was never summoned by his Supervisor nor by his director to clarify the matter and afford him to explain his side. Further, [respondent] was not furnished with any memorandum addressed to the Commission thru the Commissioner-In-Charge for Region V, Com. Florentino A. Tuason, Jr., forwarded by either [Regional Election Director (RED)] Zaragoza or PES Cariño regarding the status of his office in Sipocot, thus, leaving him helpless on what action to undertake to defend himself. In fact, neither this office was furnished with these memoranda recommending that [respondent] be dropped from the roll of employees which should not be the case considering that this office is in charge of, or if not recommendatory of any field personnel movement to the Commission thru the Commissioner-In-Charge of the region concerned. [Respondent] further averred that he was surprised upon learning that Resolution No. 5835 was promulgated on 14 November 2003 detailing him at the REDO**

[14] *Id*. at 219-224.

in Albay, attached as Annex "D." Subsequently, when [respondent] sought reconsideration of the Commission's decision to detail him to the REDO, his office in Sipocot was padlocked which prevented him from discharging his duties as [Election Officer (EO)] thereat.

He officially informed the Commission of all these circumstances as evidenced [by] the voluminous documents he submitted to the Commission thru the Office of Commissioner Tancangco, In-Charge of the Personnel Department thru Director Adolfo A. Ibañez and the Office of the Chairman, and copy furnished this office, but no definite and immediate action was undertaken by the offices mentioned nor same was forwarded to the Commission *En Banc* for proper disposition. Instead, Minute Resolution No. 03-0278 was promulgated on 11 September 2003 dropping him from the rolls.

In the interest of justice and equity, this office submitted a memorandum dated 27 October 2003, recommending that [respondent] be given at least one more chance to be of public service and to rectify his purportedly committed inadvertent administrative misfeasance, considering his satisfactory performance during previous conduct of elections in the municipality of Sipocot, coupled with the fact that there are many field personnel with multiple pending more serious administrative and election offense cases, but who are still with the Commission, while others are patently manifesting partisan activities which are clear violations of the Omnibus Election Code, but no appropriate sanctions were meted out against them by the Commission. (Emphases supplied.)

In the end, DEDO Joson recommended that:

In view of the foregoing, this office most respectfully reiterate its previous recommendation in memorandum dated 27 October 2003 that [respondent] be given another chance to be of public service by recalling the effectivity of Comelec Resolution No. 03-0278 dated 11 September 2003 dropping him from the roll of Comelec employees and reinstating him to his position as Election Officer of Sipocot, and reassigning him to other municipalities of Camarines Sur where there is no Election Officer or swapping him with another Election Officer due for reassignment under Sec. 44 of R.A. 8189 as the 10 May 2004 elections is fast approaching, and considering the prejudice done to [respondent] drastically rendering him unemployed for several

months now unduly leaving him and his family without any source of living.[15]

On February 10, 2004, the COMELEC *en banc* issued Resolution No. 04-0019. After quoting in full DEDO Joson's Memorandum dated January 26, 2004, which recommended the recall of COMELEC Resolution No. 03-0278, the COMELEC *en banc* still resolved to the contrary:

> Considering the foregoing, the Commission RESOLVED, as it hereby RESOLVES, to DENY the Motion for Reconsideration of [respondent] and to reiterate Resolution No. 03-0278 dropping him from the rolls of Comelec employees.
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> However, the Director IV, Personnel Department is directed to further explain why and what is his position in withdrawing his recommendation dropping [respondent] from the rolls of Comelec employees.
>
> Let the Personnel Department implement this resolution.[16]

CSC Proceedings

Respondent appealed COMELEC Resolution Nos. 03-0278 and 04-0019 before the CSC.[17]

The CSC issued its Resolution No. 070560 dated March 19, 2007 favoring the COMELEC *en banc*. Essentially, the CSC held that respondent failed to present evidence that he was reporting for work:

> The COMELEC decided to drop [respondent] from the rolls after the Personnel Department found out that [respondent] failed to submit his daily time records (DTRs) for the months of January-April 2002 and from January-July 2003.
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> On the other hand, [respondent] claims that he was able to submit his DTRs to his immediate supervisor – Liza D. Zabala-Cariño, then Camarines Sur Acting Provincial Election Supervisor. However, he

[15] *Id*. at 224.

[16] *Rollo*, p. 49.

[17] CA *rollo*, pp. 78-79.

represented that these DTRs were not signed by his immediate supervisor as the latter claims that there were questionable entries showing that [respondent] was on official business either to the Regional Trial Court or to Comelec-Central Office and as a result did not submit the said DTRs to the Personnel Department.

The Commission would have been convinced with the representation of [respondent] if he submitted documentary evidence showing that he indeed was reporting for work. Mere allegations and statements without any evidence to support it cannot overthrow the regularity in the performance of the Comelec in dropping him from the rolls.

[Respondent] also claims that even prior to his dropping from the rolls by the Comelec on September 11, 2003, he had already explained to the Comelec's Personnel Department that he had been regularly submitting his DTRs to his immediate supervisor after the said department informed him, when he was in the Central Office on July 4, 2003, that his salaries cannot be released for his failure to submit his DTRs. He said that his explanation was embodied in his Memorandum to the Personnel Department dated August 4, 2003 and which was received by the said office and the Office of the Deputy of Executive Director for Operations on August 6, 2003. A machine copy of said memorandum shows that it was accompanied by certified machine copies of [respondent's] transmittals of his DTRs to the OPES-Camarines Sur for the following period: January-February 2003; March-April 2003; and May 2003. In the said memorandum, [respondent] claims that these DTRs were received either by Fe G. Campos (Acting PES, Camarines Sur) or Angelina Barias (Clerk) or Rosita P. Nieves (Election Assistant). Moreover, [respondent] in a Memorandum dated 1 September 2003 informed the Personnel Department that his DTRs for the months of June-July 2003 were submitted to OPES-Camarines Sur on August 14, 2003 and received by a staff named Lizardo Junio.

However, these pieces of evidence that [respondent] submitted to the Comelec were not submitted to this Commission for our evaluation. Thus, basically [respondent] has no evidence to support his cause.

Moreover, granting that [respondent] was able to submit his DTRs to Cariño, the same cannot be considered official DTRs unless his immediate supervisor affixed her signatures on the

DTRs. As these DTRs were not signed by his immediate supervisor due to questionable entries, these DTRs, therefore, cannot be used to prove his attendance in his workstation.[18]

Consequently, the CSC dismissed respondent's appeal and affirmed COMELEC Resolution Nos. 03-0278 and 04-0019.

Respondent filed an Appearance and Motion for Reconsideration.[19] Respondent had previously represented himself but The Ojastro Law Offices was now entering its appearance as his counsel. Respondent, through counsel, averred that he had already submitted voluminous evidence attached to his Memorandum of Appeal filed with the CSC, which included the following:

1. "x x x the transmittal letter of [respondent's] DTRs to Atty. Cariño for the months of January and February 2002, which letter is dated 5 March 2002 marked as **Annex "L"**. Also, attached as **Annex "M"** is the transmittal letter of the DTRs of [respondent] for the months of March and April 2002 addressed to Atty. Cariño, dated 14 May 2002."

2. "A Memorandum for Atty. Liza Zabala-Cariño, dated March 5, 2002, was filed by [respondent] re: "Submission of Daily Time Records" for the MONTHS OF JANUARY and FEBRUARY 2002 which was received on March 8, 2002 by Mrs. Teresita Nieves, Election Assistant, OPES, Camarines Sur. (**Annex "N"**)"

3. "Certified true copies of those DTRs as certified by the Personnel Department are attached as **Annex "O"**.

4. "Insofar as [respondent's] DTRs for the months of January to July 2003, all of those were submitted on time to Atty. Cariño, as shown by the attached Certified True Copy of the [respondent's] Memorandum to Ms. Fe Campos, Acting Director of COMELEC Personnel Department, dated 1 September 2003, marked as **Annex "P"**."

5. "On September 25, 2003, Atty. Cariño issued to [respondent] a Certificate of Appearance showing [respondent's]

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[18] *Id*. at 60-61.

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

submission of his DTR for the month of August 2003, certified true copy of which is attached as **Annex "Q"**."

6. "Submission Of All Office Communication (Incoming/ Outgoing) and Other Pertinent Documents For The Period Of January To May 2003 Establishing And Delineating Particular Office Transactions Which Constitute Clarification and Thorough Explanation Against The Matter Of Withholding the Salaries Of [respondent] By The Personnel Department". (**Annex "R"**).

7. "Atty. Cariño, on October 8, 2003, issued a Certificate of Appearance to [respondent], which is, among others, a proof of the transmittal of [respondent's] DTR for the month of September 2003. It also mentions the transmittal of the duly accomplished reports in connection with the registration of voters for the period of September 20 to 26, 2003, and September 27 to October 3, 2003. (**Annex "S"**)[20]

Despite having already submitted his documentary evidence to the CSC, respondent was again furnishing the said Commission copies of his Memorandum of Appeal, together with all the annexes mentioned in and attached to the same. However, respondent explained that he could not provide original copies of his DTRs because these were transmitted to his immediate superior, PES Liza D. Zabala-Cariño (Cariño), who, in turn, submitted them to the Personnel Department of the COMELEC main office.

Respondent further contended that the CSC confused dropping from the rolls on the ground of AWOL, a non-disciplinary action, with "questionable entries in the DTR," which pertained to falsification of the DTR and required disciplinary action. The CSC admitted that respondent submitted his DTRs to PES Cariño who did not sign the same because of alleged questionable entries therein, in which case, respondent's employment should have been terminated for falsification. For the CSC to recognize a superior's withholding of his/her signature on the DTR of a subordinate as sufficient cause for dropping from the rolls would

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

send a chilling effect on the civil service, as what ought to be the subject of administrative due process would become a simple *ex parte* proceeding of dropping from the rolls, in violation of an employee's rights to security of tenure and due process. Respondent submitted that the only question the CSC should resolve was: "Was [respondent] absent for more than 30 days to give the COMELEC a ground to drop him from the rolls?"

In addition, respondent highlighted that Dir. Ibañez already withdrew his initial recommendation to drop respondent from the rolls "because of the inability to fully establish a successive thirty-day absence without approved leave." Dir. Ibañez, as COMELEC Personnel Director, was the most authoritative person in the COMELEC to determine the number of days an employee had been absent for purposes of dropping from the rolls. Since Dir. Ibañez's initial recommendation was the sole basis for the COMELEC *en banc* to drop respondent from the rolls, then the COMELEC *en banc* should have also given weight to Dir. Ibañez's withdrawal of such recommendation after realizing that his previous findings were erroneous. The COMELEC *en banc* had been stripped of the presumption of regularity in the performance of its functions given Dir. Ibañez's express admission of error and withdrawal of his recommendation to drop respondent from the rolls.

On June 22, 2007, the CSC issued Resolution No. 071241 denying respondent's Motion for Reconsideration for being a mere rehash of his appeal which was already addressed in Resolution No. 070560. The CSC likewise ruled that:

> If [respondent] and his counsel only took the time to evaluate the assailed Resolution they would realize that what the Commission wanted [respondent] to proffer are the documents that he enumerated in his Memorandum to the Comelec-Personnel Department dated August 4, 2003. Since he failed to submit these documents, [respondent] basically has no evidence to support his cause. At any rate, submission of such documentary evidence will not automatically free [respondent] from any liability for his absences without official leave as the Commission will still have to evaluate the said documents.

Finally, reliance by [respondent] on Memorandum dated October 7, 2003 of the Comelec-Personnel Department withdrawing its recommendation for the dropping from the rolls of [respondent] is erroneous as the same is not sufficient to prove that [respondent] was not guilty of absences without official leave (AWOL). It is important to emphasize that the Comelec decided to drop [respondent] from the rolls after the Personnel Department found out that [respondent] failed to submit his daily time records (DTRs) for the months of January-April 2002 and from January-July 2003. On the other hand, Memorandum dated October 7, 2003 of Comelec-Personnel Department only considered the submission by [respondent's] immediate supervisor (Liza D. Zabala-Cariño) of [respondent's] unverified June-July 2003 DTRs and the explanation of [respondent] that "his duly accomplished daily time records from January 2003 to present were already submitted to the Office of the Provincial Election Supervisor with the corresponding date of receipt by the OPES."[21]

Court of Appeals Proceedings

Aggrieved, respondent appealed CSC Resolution Nos. 070560 and 071241 before the Court of Appeals under Rule 43 of the Rules of Court.[22]

In its Decision dated July 12, 2011, the Court of Appeals found merit in respondent's appeal and adjudged that:

Based on the records, it was established that [respondent] had in fact submitted his DTRs to his immediate supervisor Atty. Zabala-Cariño, who admitted receiving the same but refused to verify it for she was suspecting that the entries therein were falsified. Due to this fact, COMELEC Head of Personnel Department, Atty. Ibañez, sent a Memorandum to the COMELEC En Banc to withdraw the resolution dropping [respondent] from the rolls based on the fact that [respondent] did submit his DTRs, only that the same were questionable. Hence, he recommended that formal charges for Falsification of an official document instead be filed against [respondent]. However, no complaint was filed against [respondent], rather, the COMELEC En Banc affirmed its resolution. It must be

[21] *Id*. at 69-70.

[22] *Id*. at 27-51.

noted that the basis for the dropping of [respondent] from the rolls is the letter recommendation of the COMELEC Head of Personnel Department, Atty. Ibañez, stating therein that [respondent] failed to submit his DTR for the months of January-April 2002 and January up to the time of promulgation of questioned COMELEC resolution, which non-submission of DTR was construed to be Absences Without Official Leave (AWOL). **Thus, since it was established that the DTRs were submitted, the resolution of the COMELEC dropping [respondent] from the rolls is without basis.** Hence, a complaint should have been filed instead.

Falsification of an official document such as the DTR is considered a grave offense under the CSC Revised Uniform Rules and is penalized with dismissal for the first offense. It is also punishable as a criminal offense under Article 171 of the Revised Penal Code. Atty. Zabala-Cariño's accusation of Falsification of a DTR is a factual issue which must have been accorded with a proper administrative investigation to ascertain the truthfulness thereof.

Settled is the rule that in administrative proceedings, the burden of proof that the petitioner committed the act complained of rests on the complainant. The complainant must be able to show this by substantial evidence, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Otherwise, the complaint must be dismissed.

x x x x x x x x x

Hence, [respondent] having been accused of falsifying his DTRs should have been accorded due process to clear his name of such accusation and not the automatic dismissal from office through dropping of his name in the rolls of employees.

x x x x x x x x x

Based on the foregoing, [respondent] holds an appointment under permanent status and thus enjoys security of tenure as guaranteed by law. As an employee in the civil service and as a civil service eligible, [respondent] is entitled to the benefits, rights, and privileges extended to those belonging to the service. [Respondent] could not be removed or dismissed from the service without just cause and without observing the requirements of due process as what happened in the present case. However, according to settled jurisprudence, an illegally terminated civil service employee is entitled to back salaries

limited only to a maximum period of five years and not full back salaries from his illegal termination up to his reinstatement.[23]

The dispositive portion of the Court of Appeals Decision reads:

> **IN VIEW WHEREOF**, the Petition is hereby **GRANTED**. The Resolution No. 07-0560 of the Civil Service Commission dated March 19, 2007 affirming COMELEC Resolution No. 03-0278 dated September 11, 2003 and COMELEC Resolution No. 04-0019 dated February 10, 2004 dropping [respondent] Crisostomo M. Plopinio from the rolls of employees is hereby **REVERSED** and **SET ASIDE**. Accordingly, Crisostomo M. Plopinio is hereby reinstated to his former position without loss of seniority rights and other privileges appurtenant to the position. Furthermore, he should be paid his back salaries limited only to a maximum period of five years and not full back salaries from his illegal termination up to his reinstatement.[24]

The Petition before this Court

The CSC now comes before this Court via the instant Petition, anchored on the sole assignment of error, *viz.*:

> THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN FINDING THAT RESPONDENT WAS DEPRIVED OF DUE PROCESS.[25]

The Petition is bereft of merit.

There is no question that a public officer or employee who is AWOL may be separated from service or dropped from the rolls of employees without prior notice.

Rule VI, Section 63 of the Omnibus Rules on Leave in the Civil Service[26] provides:

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[23] *Rollo*, pp. 37-39.

[24] *Id*. at 39-40.

[25] *Id*. at 16.

[26] As amended by CSC Memorandum Circular No. 41, series of 1998; CSC Memorandum Circular No. 14, series of 1999; and CSC Memorandum Circular No. 13, series of 2007.

Sec. 63. ***Effect of absences without approved leave.*** – **An official or employee who is continuously absent without approved leave for at least thirty (30) working days shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice.** However, when it is clear under the obtaining circumstances that the official or employee concerned, has established a scheme to circumvent the rule by incurring substantial absences though less than thirty working (30) days 3x in a semester, such that a pattern is already apparent, dropping from the rolls without notice may likewise be justified.

If the number of unauthorized absences incurred is less than thirty (30) working days, a written Return-to-Work Order shall be served to him at his last known address on records. Failure on his part to report for work within the period stated in the Order shall be a valid ground to drop him from the rolls. (Emphasis supplied.)

Rule 19, Sections 93 and 96 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS)[27] similarly state:

Rule 19
DROPPING FROM THE ROLLS

Sec. 93. *Grounds and Procedure for Dropping from the Rolls.* – Officers and employees who are either habitually absent or have unsatisfactory or poor performance or have shown to be physically and mentally unfit to perform their duties may be dropped from the rolls subject to the following procedures:

a. Absence Without Approved Leave

1. **An officer or employee who is continuously absent without official leave (AWOL) for at least thirty (30) working days shall be separated from the service or dropped from the rolls without prior notice.** He/She shall, however, be informed of his/her separation not later than five (5) days from its effectivity which shall be

[27] Superseding Section 2 of Rule XII of the Omnibus Rules on Appointments and Other Personnel Actions in the Civil Service (MC No. 40, Series of 1998, as amended by MC No. 15, Series of 1999).

sent to the address on his/her 201 files or to his/her last known address;

2. If the number of unauthorized absences incurred is less than thirty (30) working days, a written Return-to-Work order shall be served on the official or employee at his/her last known address on record. Failure on his/her part to report to work within the period stated in the order shall be a valid ground to drop him/her from the rolls;

3. If it is clear under the obtaining circumstances that the official or employee concerned, has established a scheme to circumvent the rule by incurring substantial absences though less than thirty (30) working days, three (3) times in a semester, such that a pattern is already apparent, dropping from the rolls without notice may likewise be justified.

Section 96. *Dropping from the Rolls; Non-Disciplinary in Nature.* – This mode of separation from the service for unauthorized absences or unsatisfactory or poor performance or physical or mental incapacity is **non-**disciplinary **in nature** and **shall not result in the forfeiture of any benefit on the part of the official or employee or in disqualification from reemployment in the government**. (Emphases supplied.)

Based on current rules, a public officer or employee may be dropped from the rolls for AWOL without prior notice, under any of the following circumstances: (1) the public officer or employee was continuously absent without approved leave for at least 30 working days; or (2) the public officer or employee had established a scheme to circumvent the rule by incurring substantial absences, though less than 30 working days, three times in a semester, such that a pattern was readily apparent.

Dropping from the rolls is not disciplinary in nature. It shall not result in the forfeiture of any benefit of the public official or employee concerned nor in said public official or employee's disqualification from reemployment in the government. Thus,

the concerned public official or employee need not be notified or be heard.[28]

To recall, respondent was dropped by the COMELEC *en banc* from the rolls of employees for alleged AWOL, but respondent's circumstances did not constitute a clear-cut case of AWOL. Dir. Ibañez, of the COMELEC Personnel Department, initially reported in his Memorandum dated August 20, 2003 that respondent did not file his DTRs for the periods of January to April 2002 and January to July 2003, on the basis of which, Dir. Ibañez presumed that respondent had been AWOL during said periods and, thus, recommended that respondent be dropped from the rolls. The COMELEC *en banc*, in its Resolution No. 03-0278, fully adopted the findings and recommendation in Dir. Ibañez's Memorandum dated August 20, 2003 and dropped respondent from the rolls.

It is stressed though that in this case, there was no proof that respondent was actually absent or did not report for work for 30 days or more. Respondent's AWOL was merely presumed from the fact that his DTRs for the periods of January to April 2002 and January to July 2003 were not on file with the COMELEC Personnel Department.

However, as respondent consistently avowed, he had submitted his DTRs for the periods in question, presenting before the COMELEC his evidence, to wit: the transmittal letters for his DTRs for January to April 2002, duly received by the OPES; certified photocopies of his DTRs for March and April 2002; Memorandum dated September 1, 2003 to the COMELEC Personnel Department accounting for the dates of submission and the person/s at the OPES who received his DTRs for January to July 2003 and already reporting that PES Cariño was not submitting his said DTRs to the COMELEC Personnel Department; transmittal letters duly received by the OPES for his DTRs for March and April 2003; and photocopy of his DTR for August 2003. In contrast, PES Cariño, as respondent's immediate supervisor, had been glaringly silent all throughout the proceedings, unable to categorically deny

[28] *Plaza II v. Cassion,* 479 Phil. 181 (2004)

that her office received respondent's DTRs for the periods in question. In fact, the only time PES Cariño spoke up in this case was to admit to Dir. Ibañez that respondent submitted his DTRs for June to July 2003 but she did not sign the same because she found some of respondent's entries in said DTRs questionable.

Taking into account the evidence submitted by respondent, together with PES Cariño's admission, Dir. Ibañez issued his Memorandum dated October 7, 2003, explicitly declaring that there was "the inability to fully establish a successive thirty-day absence without approved leave (AWOL) on the part of [respondent]" and withdrawing the recommendation in his earlier Memorandum dated August 20, 2003 to drop respondent from the rolls. Dir. Ibañez recommended instead that PES Cariño file an administrative complaint against respondent for absenteeism or other administrative disciplinary case as warranted. The COMELEC *en banc* cannot simply disregard Dir. Ibanez's Memorandum dated October 7, 2003 recalling his Memorandum dated August 20, 2003, when the COMELEC *en banc* entirely based its Resolution No. 03-0278, dropping respondent from the rolls, on Dir. Ibanez's Memorandum dated August 20, 2003. Notably, the COMELEC *en banc*, in denying respondent's Motion for Reconsideration in its Resolution No. 04-0019, did not proffer any explanation as to why it rejected the findings and recommendation in Dir. Ibañez's Memorandum dated October 7, 2003.

DEDO Joson, whose office was in charge of field personnel movement, also issued a Memorandum dated January 26, 2004, referring to the voluminous documents respondent submitted to various offices of the COMELEC, including his office and that of Dir. Ibañez, which established that respondent had actually submitted his DTRs to the Office of the Provincial Election Supervisor (OPES) for the periods in question but PES Cariño did not sign respondent's DTRs nor forwarded them to the COMELEC Personnel Department. DEDO Joson recommended the recall of COMELEC Resolution No. 03-0278 and the reinstatement of respondent to his position as Election Officer.

It was unreasonable to still require respondent to submit his DTRs, duly signed by PES Cariño, when the root cause of

respondent's problem in the first place was PES Cariño's failure, if not outright refusal, to sign respondent's DTRs and forward the same to the COMELEC Personnel Division. Contrary to the averment of the CSC, respondent had essentially attached to his Appeal Memorandum, and again in his Motion for Reconsideration, filed with said Commission the relevant documentary evidence to substantiate his claim that he submitted his DTRs for January to April 2002 and January to July 2003.

In light of the foregoing circumstances, there is reasonable ground to believe that respondent did submit his DTRs for January to April 2002 and January to July 2003 to his immediate supervisor, PES Cariño, who did not sign and forward the same to the COMELEC Personnel Department. Therefore, there is no more factual basis for the presumption that respondent had been AWOL for the said time periods that would have, in turn, justified his being dropped from the rolls. Without such presumption, the COMELEC could only insist on the dropping of respondent from the rolls on the ground of AWOL if it could establish that respondent had been actually absent without approved leave for 30 days or more – which the COMELEC *en banc* utterly failed to do in this case.

In sum, there being no factual basis that respondent had been AWOL, he could not simply be dropped from the rolls. Any other allegation of wrongdoing on respondent's part, *i.e.*, falsification of entries in the DTRs or frequent absenteeism, does not warrant dropping from the rolls, but require the institution of any appropriate charge and/or administrative proceedings against respondent before any disciplinary action can be taken against him. The Court of Appeals, therefore, did not commit any reversible error in ordering respondent's reinstatement and payment of his back salaries.

WHEREFORE, in view of the foregoing, the Petition is **DENIED** for lack of merit and the Decision dated July 12, 2011 of the Court of Appeals in CA-G.R. SP No. 99906 is **AFFIRMED**.

SO ORDERED.

Sereno, C.J.(Chairperson), del Castillo, and *Caguioa, JJ.,* concur.

Perlas-Bernabe, J., on leave.

SECOND DIVISION

[G.R. No. 206023. April 3, 2017]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **LORENA OMAPAS SALI,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; CORRECTION OF ENTRIES IN THE CIVIL REGISTRY; THE SUPREME COURT HAS HELD THAT NOT ALL ALTERATIONS ALLOWED IN ONE'S NAME ARE CONFINED UNDER RULE 103 AND THAT CORRECTIONS FOR CLERICAL ERRORS MAY BE SET RIGHT UNDER RULE 108; CASE AT BAR.— Sali's petition is not for a change of name as contemplated under Rule 103 of the Rules but for correction of entries under Rule 108. What she seeks is the correction of clerical errors which were committed in the recording of her name and birth date. This Court has held that not all alterations allowed in one's name are confined under Rule 103 and that corrections for clerical errors may be set right under Rule 108. The evidence presented by Sali show that, since birth, she has been using the name "Lorena." Thus, it is apparent that she never had any intention to change her name. What she seeks is simply the removal of the clerical fault or error in her first name, and to set aright the same to conform to the name she grew up with.

2. CIVIL LAW; REPUBLIC ACT NO. 9048 (AUTHORIZING THE CITY OR MUNICIPAL CIVIL REGISTRAR OR THE CONSUL GENERAL TO CORRECT CLERICAL OR TYPOGRAPHICAL ERROR IN AN ENTRY AND/OR CHANGE OF FIRST NAME OR NICKNAME IN THE CIVIL REGISTRAR WITHOUT NEED OF JUDICIAL ORDER); THE LOCAL CITY OR MUNICIPAL CIVIL REGISTRAR OR CONSUL GENERAL HAS THE PRIMARY JURISDICTION TO ENTERTAIN THE PETITION FOR CHANGE OF NAME.— Nevertheless, at the time Sali's petition was filed, R.A. No. 9048 was already in effect. x x x The petition for change of first name may be

allowed, among other grounds, if the new first name has been habitually and continuously used by the petitioner and he or she has been publicly known by that first name in the community. The local city or municipal civil registrar or consul general has the primary jurisdiction to entertain the petition. It is only when such petition is denied that a petitioner may either appeal to the civil registrar general or file the appropriate petition with the proper court. We stressed in *Silverio v. Republic of the Philippines*: RA 9048 now governs the change of first name. It vests the power and authority to entertain petitions for change of first name to the city or municipal civil registrar or consul general concerned. Under the law, therefore, jurisdiction over applications for change of first name is now primarily lodged with the aforementioned administrative officers. The intent and effect of the law is to exclude the change of first name from the coverage of Rules 103 (Change of Name) and 108 (Cancellation or Correction of Entries in the Civil Registry) of the Rules of Court, until and unless an administrative petition for change of name is first filed and subsequently denied. It likewise lays down the corresponding venue, form and procedure. In sum, the remedy and the proceedings regulating change of first name are primarily administrative in nature, not judicial. x x x In this case, the petition, insofar as it prayed for the change of Sali's first name, was not within the RTC's primary jurisdiction. It was improper because the remedy should have been administrative, *i.e.*, filing of the petition with the local civil registrar concerned. For failure to exhaust administrative remedies, the RTC should have dismissed the petition to correct Sali's first name.

3. **ID.; ID.; AS AMENDED ON AUGUST 15, 2012 BY REPUBLIC ACT NO. 10172; THE AUTHORITY TO CORRECT CLERICAL OR TYPOGRAPHICAL ERROR BY THE CITY OR MUNICIPAL CIVIL REGISTRAR OR THE CONSUL GENERAL NOW INCLUDES CORRECTION TO THE DAY AND MONTH IN THE DATE OF BIRTH AND SEX OF A PERSON.—** On the other hand, anent Sali's petition to correct her birth date from "June 24, 1968" to "April 24, 1968," R.A. No. 9048 is inapplicable. It was only on August 15, 2012 that R.A. No. 10172 was signed into law amending R.A. No. 9048. As modified, Section 1 now includes the day and month in the date of birth and sex of a

person, thus: x x x Considering that Sali filed her petition in 2008, Rule 108 is the appropriate remedy in seeking to correct her date of birth in the civil registry.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
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 Court (*Rules*) seeks to annul and set aside the February 11, 2013 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CEB CV No. 03442, which affirmed *in toto* the February 23, 2010 Decision of the Regional Trial Court (*RTC*), Branch 14, Baybay City, Leyte, granting the Petition for Correction of Entry under Rule 108 of the *Rules* filed by respondent Lorena Omapas Sali (*Sali*).

The CA narrated the undisputed factual antecedents.

Lorena Omapas Sali filed a Verified Petition, dated November 26, 2008, for Correction of Entry under Rule 108 of the Rules of Court before the RTC with the following material averments:

1. Petitioner is a Filipino, of legal age, single and a resident [of] 941 D. Veloso St., Baybay, Leyte;

2. The respondent is located in Baybay City, Leyte and within the jurisdiction of this Honorable Court where it can be served with summons and other processes of this Honorable Court;

3. All parties herein have the capacity to sue and be sued;

4. Petitioner is the daughter of Spouses Vedasto A. Omapas and Almarina A. Albay who was born on April 24, 1968 in Baybay,

[1] Penned by Associate Justice Ramon Paul L. Hernando, with Associate Justices Carmelita Salandanan-Manahan and Maria Elisa Sempio-Dy, concurring; *rollo*, pp. 28-32.

Leyte. A copy of the Baptismal Certificate issued by the Parish of the Sacred Heart, Sta. Mesa, Manila is hereunto attached as Annex "A";

5. Unfortunately, in recording the facts of her birth, the personnel of the Local Civil Registrar of Baybay, Leyte, thru inadvertence and mistake, erroneously entered in the records the following: Firstly, the first name of the petitioner as "**DOROTHY**" instead of "**LORENA**" and Secondly, the date of birth of the petitioner as "**June 24, 1968**" instead of "**April 24, 1968**." A copy of the Certificate of Live Birth of Dorothy A. Omapas issued by the National Statistics Office (NSO) and Certification from the Local Civil Registrar of Baybay, Leyte are hereunto attached as Annex "B" and Annex "C" respectively.

6. The petitioner has been using the name "Lorena A. Omapas["] and her date of birth as "April 24, 1968" for as long as she *(sic)* since she could remember and is known to the community in general as such;

7. To sustain petitioner's claim that the entries in her Certificate of Live Birth pertaining to her first name and date of birth should be corrected so that it will now read as "**LORENA A. OMAPAS**" and "**April 24, 1968**" respectively, atttached hereto are: the Certificate of Marriage of Morsalyn [D.] Sali and Lorena A. Omapas, and a photocopy of the Postal Identity Card of the petitioner as Annex "D" and Annex "E" respectively; [and]

8. This petition is intended neither for the petitioner to escape criminal and/or civil liability, nor affect the hereditary succession of any person whomsoever but solely for the purpose of setting the records of herein petitioner straight.

[Sali] then prayed for the issuance of an order correcting her first name from "Dorothy" to "Lorena" and the date of her birth from "June 24, 1968" to "April 24, 1968."

After [Sali] proved her compliance with the jurisdictional requirements, reception of evidence followed. The Clerk of Court was then appointed as a commissioner to receive the evidence in support of the petition. Subsequently, she rendered a Report relative thereto.

On February 23, 2010, the trial court issued the assailed Decision in favor of [Sali], the dispositive portion of which reads:

WHEREFORE, this Court, hereby resolves to GRANT this petition for correction of the erroneous entries in the Birth Certificate of Lorena A. Omapas-Sali, specifically her first name from "DOROTHY" to "LORENA" and her date of birth from "JUNE 24, 1968" to "APRIL 24, 1968", and ordering the Local Civil Registrar of Baybay City, Leyte, and the National Statistics Office to effect the foregoing correction in the birth record of Lorena A. Omapas-Sali, upon finality of this decision, and upon payment of the proper legal fees relative thereto.

Furnish copy of this decision to the Office of the Solicitor General, the Local Civil Registrar of Baybay City, Leyte, the Assistant Provincial Prosecutor, the petitioner and her counsel.

SO ORDERED.[2]

On March 24, 2010, the Republic, through the Office of the Solicitor General (*OSG*), appealed the RTC Decision for lack of jurisdiction on the part of the court *a quo* because the title of the petition and the order setting the petition for hearing did not contain Sali's aliases.

The CA denied the appeal, ruling that: (1) the records are bereft of any indication that Sali is known by a name other than "Lorena," hence, it would be absurd to compel her to indicate any other alias that she does not have; (2) Sali not only complied with the mandatory requirements for an appropriate adversarial proceeding under Rule 108 of the Rules but also gave the Republic an opportunity to timely contest the purported defective petition; and (3) the change in the first name of Sali will certainly avoid further confusion as to her identity and there is no showing that it was sought for a fraudulent purpose or that it would prejudice public interest.

Now before Us, the grounds of the petition are as follows:

I.

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW WHEN IT APPLIED RULE 108 INSTEAD OF RULE 103, THEREBY

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[2] *Id*. at 28-30. (Citations omitted).

DISPENSING WITH THE REQUIREMENT OF STATING THE RESPONDENT'S ALIASES IN THE TITLE OF THE PETITION.

II.

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN NOT HOLDING THAT THE RESPONDENT FAILED TO EXHAUST ADMINISTRATIVE REMEDIES.[3]

The Republic argues that although Sali's petition is entitled: "IN THE MATTER OF THE PETITION FOR CORRECTION OF ENTRY IN THE CERTIFICATE OF LIVE BIRTH OF DOROTHY A. OMAPAS," it is actually a petition for a change of name. The first name being sought to be changed does not involve the correction of a simple clerical, typographical or innocuous error such as a patently misspelled name, but a substantial change in Sali's first name. This considering, the applicable rule is Rule 103, which requires that the applicant's names and aliases must be stated in the title of the petition and the order setting it for hearing, and that the petition can be granted only on specific grounds provided by law. Further, assuming that a petition for correction of entries under Rule 108 is the appropriate remedy, the petition should not have been granted for failure to exhaust administrative remedies provided for under Republic Act (*R.A.*) No. 9048.

The petition is partially granted.

Sali's petition is not for a change of name as contemplated under Rule 103 of the Rules but for correction of entries under Rule 108. What she seeks is the correction of clerical errors which were committed in the recording of her name and birth date. This Court has held that not all alterations allowed in one's name are confined under Rule 103 and that corrections for clerical errors may be set right under Rule 108.[4] The evidence[5] presented by Sali show that, since birth, she has been using the name "Lorena." Thus, it is apparent that she never had any intention to change her name.

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[3] *Id.* at 10.

[4] *Republic v. Vergara,* G.R. No. 195873 (Notice), February 23, 2015.

[5] Baptismal Certificate, Certificate of Marriage, Postal Identity Card, and Official Transcript of Records from the University of Manila, *rollo*, p. 9.

What she seeks is simply the removal of the clerical fault or error in her first name, and to set right the same to conform to the name she grew up with.[6]

Nevertheless, at the time Sali's petition was filed, R.A. No. 9048 was already in effect.[7] Section 1 of the law states:

> SECTION 1. *Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname*. – No entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and **change of first name** or nickname which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations. (Emphasis ours)

The petition for change of first name may be allowed, among other grounds, if the new first name has been habitually and continuously used by the petitioner and he or she has been publicly known by that first name in the community.[8] The local city or municipal civil registrar or consul general has the primary jurisdiction to entertain the petition. It is only when such petition is denied that a petitioner may either appeal to the civil registrar general or file the appropriate petition with the proper court.[9] We stressed in *Silverio v. Republic of the Philippines*:[10]

> RA 9048 now governs the change of first name. It vests the power and authority to entertain petitions for change of first name to the city or municipal civil registrar or consul general concerned. Under the law, therefore, jurisdiction over applications for change of first name is now primarily lodged with the aforementioned administrative officers. The intent and effect of the law is to exclude the change of first name from the coverage of Rules 103 (Change of Name) and 108 (Cancellation or Correction of Entries in the Civil Registry) of the Rules of Court, until and unless an administrative petition for change of name is first filed

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[6] See *Republic v. Vergara,* G.R. No. 195873 (Notice), February 23, 2015.

[7] R.A. No. 9048 took effect on April 22, 2001.

[8] R.A. No. 9048, Sec. 4(2).

[9] R.A. No. 9048, Sec. 7.

[10] 562 Phil. 953 (2007).

and subsequently denied. It likewise lays down the corresponding venue, form and procedure. In sum, the remedy and the proceedings regulating change of first name are primarily administrative in nature, not judicial.[11]

Recently, the Court again said in *Onde v. Office of the Local Civil Registrar of Las Piñas City*:[12]

> In *Silverio v. Republic*, we held that under R.A. No. 9048, jurisdiction over applications for change of first name is now primarily lodged with administrative officers. The intent and effect of said law is to exclude the change of first name from the coverage of Rules 103 (Change of Name) and 108 (Cancellation or Correction of Entries in the Civil Registry) of the Rules of Court, until and unless an administrative petition for change of name is first filed and subsequently denied. The remedy and the proceedings regulating change of first name are primarily administrative in nature, not judicial. In *Republic v. Cagandahan*, we said that under R.A. No. 9048, the correction of clerical or typographical errors can now be made through administrative proceedings and without the need for a judicial order. The law removed from the ambit of Rule 108 of the Rules of Court the correction of clerical or typographical errors. Thus petitioner can avail of this administrative remedy for the correction of his and his mother's first name.[13]

In this case, the petition, insofar as it prayed for the change of Sali's first name, was not within the RTC's primary jurisdiction. It was improper because the remedy should have been administrative, *i.e.*, filing of the petition with the local civil registrar concerned. For failure to exhaust administrative remedies, the RTC should have dismissed the petition to correct Sali's first name.

On the other hand, anent Sali's petition to correct her birth date from "June 24, 1968" to "April 24, 1968," R.A. No. 9048 is inapplicable. It was only on August 15, 2012 that R.A. No. 10172 was signed into law amending R.A. No. 9048.[14] As modified,

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[11] *Silverio v. Rep. of the Phils., supra*, at 964-965.

[12] G.R. No. 197174, September 10, 2014, 734 SCRA 661 (3rd Division Resolution).

[13] *Onde v. Office of the Local Civil Registrar of Las Piñas City, supra*, at 668.

[14] Published in the *Philippine Star* and *Manila Bulletin* on August 24, 2012 (See http://www.gov.ph/2012/08/15/republic-act-no-10172/, last accessed on November 9, 2016).

Section 1 now includes the day and month in the date of birth and sex of a person, thus:

> Section 1. *Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname.* – No entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and change of first name or nickname, **the day and month in the date of birth** or sex of a person where it is patently clear that there was a clerical or typographical error or mistake in the entry, which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations. (Emphasis ours)

Considering that Sali filed her petition in 2008, Rule 108[15] is the appropriate remedy in seeking to correct her date of birth in the civil registry. Under the *Rules*, the following must be observed:

> **Sec. 3.** *Parties.* – When cancellation or correction of an entry in the civil register is sought, the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding.
>
> **Sec. 4.** *Notice and publication.* – Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be given to the persons named in the petition. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.
>
> **Sec. 5.** *Opposition.* – The civil registrar and any person having or claiming any interest under the entry whose cancellation or correction is sought may, within fifteen (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition thereto.

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[15] SEC. 2. *Entries subject to cancellation or correction.* – Upon good and valid grounds, the following entries in the civil register may be cancelled or corrected: (a) births; (b) marriages; (c) deaths; (d) legal separations; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions (i) acknowledgments of natural children; (j) naturalization; (k) election, loss or recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (o) change of name.

The Republic did not question the petition to correct Sali's birth date from "June 24, 1968" to "April 24, 1968." In fact, it did not contest the CA ruling that the requirements for an appropriate adversarial proceeding were satisfactorily complied with. The appellate court found:

x x x x x x x x x

Here, [Sali] filed with the court *a quo* a verified petition for the correction of her first name from "Dorothy" to "Lorena" as well as the date of her birth from "June 24, 1968" to "April 24, 1968." In the petition, she aptly impleaded the Civil Registrar of Baybay City, Leyte as respondent. Thereafter, the trial court issued an Order fixing the time and place for the hearing of the petition. The Order for hearing was then published once a week for three consecutive weeks in a newspaper of general circulation in the province to notify the persons having or claiming any interest therein. Moreover, said Order was posted in four public and conspicuous places within the locality. Subsequently, the Civil Registrar, Solicitor General and Assistant Provincial Prosecutor were furnished copies of the Petition and Order to give them the opportunity to file their respective oppositions thereto.x x x[16]

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. The February 11, 2013 Decision of the Court of Appeals in CA-G.R. CEB CV No. 03442, which affirmed *in toto* the February 23, 2010 Decision of the Regional Trial Court, Branch 14, Baybay City, Leyte, is **AFFIRMED WITH MODIFICATION**. The petition for correction of entry in the Certificate of Live Birth of Dorothy A. Omapas with respect to her first name is **DISMISSED WITHOUT PREJUDICE** to its filing with the local civil registrar concerned.

SO ORDERED.

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

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[16] *Rollo*, p. 31.

EN BANC

[A.M. OCA IPI No. 10-21-SB-J. April 4, 2017]

IN RE: ALLEGED IMMORALITY AND UNEXPLAINED WEALTH OF SANDIGANBAYAN ASSOCIATE JUSTICE ROLAND B. JURADO and CLERK OF COURT IV MONA LISA A. BUENCAMINO, METROPOLITAN TRIAL COURT, CALOOCAN CITY.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; IN ADMINISTRATIVE CASES, THE QUANTUM OF PROOF NECESSARY FOR THE FINDING OF GUILT IS SUBSTANTIAL EVIDENCE.—** In administrative cases, the quantum of proof necessary for the finding of guilt is substantial evidence. Substantial evidence is more than a mere scintilla of evidence; it is the amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 6713 (CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES); THE FILING OF SALN (STATEMENT OF ASSETS, LIABILITIES, AND NETWORTH) IS OBLIGATORY ON THE PART OF ALL OFFICIALS AND EMPLOYEES OF THE GOVERNMENT.—** It must be emphasized that the filing of SALNs is obligatory on the part of all officials and employees of the government. A SALN is a *pro forma* document which must be completed and submitted under oath by the declarant attesting to his/her total assets and liabilities, including businesses and financial interests that make up his/her net worth. Republic Act *(R.A.)* No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, mandates all officials and employees in the government service to accomplish and submit, under oath, declarations of their assets, liabilities, net worth and business interests including those of their spouse and unmarried children

below eighteen *(18)* years of age. x x x Thus, upon assumption of office and every year thereafter, it is mandatory for all public officials and employees, whether regular or co-terminous, to file their SALNs.

3. ID.; CONSTITUTIONAL COMMISSIONS; CIVIL SERVICE COMMISSION (CSC); CSC RESOLUTION NO. 1500088, DATED JANUARY 23, 2015 IS THE CURRENT SALN THAT MUST BE ACCOMPLISHED BY ALL GOVERNMENT OFFICIALS AND EMPLOYEES.— In completing the SALN, particularly the portion requiring the declaration of real properties, it is compulsory for the declarant to disclose the kind, location, year and mode of acquisition, the assessed value, current fair market value and the acquisition cost of the property including the improvements thereon. Before 2011, public officers and employees accomplished their SALNs by accomplishing the *pro forma* form drawn up by the Civil Service Commission *(CSC)*. During the time, a general statement of one's assets and liabilities would suffice, as the declarant had no obligation to enumerate in detail his assets and liabilities. x x x Unlike the old form, the new SALN form is more restrictive as it requires a more detailed and sworn statement of the declarant's assets, liabilities and net worth, including disclosure of business interests, financial connections, relatives in the government service, and amount and sources of income for the preceding calendar year. With respect to real property, the declarant is mandated to disclose the description and the exact location of the property involved.

D E C I S I O N

MENDOZA, *J.*:

The controversy stemmed from an anonymous letter-complaint,[1] originally filed before the Office of the President and copy furnished the Office of the Ombudsman *(Ombudsman)*, charging respondents Roland B. Jurado *(Justice Jurado)*, Associate Justice of the Sandiganbayan and Atty. Monalisa A. Buencamino *(Atty. Buencamino)*, Clerk of Court IV,

[1] *Rollo*, p. 1.

Metropolitan Trial Court *(MeTC),* Office of the Clerk of Court, Caloocan City with unexplained wealth and immorality. The anonymous letter-complaint was eventually referred to the Court by the Ombudsman.

Acting on the said letter-complaint, the Court, in its February 2, 2010 Resolution,[2] directed the Office of the Court Administrator *(OCA)* to conduct a discreet investigation on the matter. The OCA formed a team, composed of Alwin M. Tumalad, George B. Molo, Jose Antonio A. Soriano, Leah Easter P. Laja, Lesalie M. Ramos, Miguel L. Mergal, and Rex Allen R. Gregorio, all lawyers from the Legal Office and Lamberto Gamboa, Court Chauffeur, to conduct the investigation from March 8 to 31, 2010.[3]

The OCA Report and Recommendation

Based on the initial investigation, the OCA reported that Justice Jurado and Atty. Buencamino owned several properties located in different parts of Metro Manila; and that Justice Jurado understated his properties in the Statement of Assets and Liabilities *(SALN)* for the years 2000 to 2005 and 2008,[4] while Atty. Buencamino's SALN contained several inconsistencies. The OCA deemed it irregular that a real property covered by Transfer Certificate of Title *(TCT)* No. T-23272 was owned in common by Atty. Buencamino and Justice Jurado, a married man. The findings and observation of the OCA were embodied in the Memorandum,[5] dated December 9, 2016, reporting as follows:

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

[3] *Id*. at 4.

[4] *Id*. at 29. The Statement of Assets and Liabilities of Justice Jurado for the years 2006 and 2007 were not provided by the Sandiganbayan. See page 6 of the Memorandum.

[5] *Id*. at 24-36.

I. **Real Properties owned by Associate Justice Jurado**

Transfer Certificate of Title/ Tax Declaration	Date issued	Registered Owner	Location	Description	Market Value
T-31408	9-30-1992	Roland Jurado	Pamplona Tres, Las Piñas City	Land	₱61,600.00
T-31409	9-30-1992	Roland Jurado	Pamplona Tres,Las Piñas City	Land	₱61,600.00
T-31407	9-30-1992	Roland Jurado	Pamplona Tres, Las Piñas City	Land	₱61,600.00
T-23269	3-21-1991	Roland Jurado	Pamplona Tres, Las Piñas City	Land	₱242,000.00
PT-135396	6-26-2007	Roland Jurado	Santolan Pasig	Land	
TCT No. 2225	5-11-1989	Roland Jurado	Mandaluyong City	Land	₱150,000.00
TD-23-00495	[No data; tax declaration only]	Roland Jurado	Mandaluyong City	Residential Apartment	₱500,500.00
TD-00-CA 0003-07277	1-13-2009	Roland Jurado	Cainta, Rizal	Land	₱332,000.00
TD-00-CA 0003-07278	1-13-2009	Roland Jurado	Cainta, Rizal	Building	₱286,378.00
TD-00-CA 0003-05880[6]	10-30 2008	Roland Jurado	Cainta, Rizal	Building	₱222,720.00
TD-00-CA 0003-05855	10-30-2008	Roland Jurado	Cainta, Rizal	Land	₱201,000.00
E-011-04891	11-15-2002	Roland Jurado	Pamplona Tres, Las Piñas City	Building	₱395,200.00
E-011-04889	11-15-2002	Roland Jurado	Pamplona Tres, Las Piñas City	Building	₱376,000.00
E-011-04893	11-15-2002	Roland Jurado	Pamplona Tres, Las Piñas City	Building	₱304,000.00

[6] Should be TD-00-CA-0003-05860, Annex "R" of the OCA Memorandum, *id.* at 62.

E-011-06764	11-15-2002	Roland Jurado	Pamlpona Tres, Las Piñas City	Building	₱717,500.00
E-011-06763	11-15-2002	Roland Jurado	Pamplona Tres, Las Piñas City	Building	₱717,500.00
E-011-04895	11-15-2002	Roland Jurado	Pamplona Tres, Las Piñas City	Land	₱127,600.00
E-011-04894	11-15-2002	Roland Jurado	Pamplona Tres,Las Piñas City	Land	₱83,600.00

II. Real Properties co-owned by Associate Justice Jurado and Clerk of Court Buencamino

TCT	Date Issued	Registered Owner	Location	Description	Market Value
T-23272	3-21-1991	Roland Jurado and Mona Liza Buencamino	Pamplona Tres, Las Piñas City	Land	₱56,980

III. Real Properties owned by Clerk of Court Buencamino:

Transfer Certificate of Title/ Tax Declaration	Date issued	Registered Owner	Location	Description	Market Value
T-22005	12-27-1990	Mona Liza Buencamino	Pamplona Tres, Las Piñas City	Land	₱319,000.00
E-011-0667	11-15-2002	Mona Liza Buencamino	Pamplona Tres, Las Piñas City	Building	₱990,000.00
T-23267	3-21-1991	Mona Liza Buencamino	Pamplona Tres, Las Piñas City	Land	₱396,000.00
E-011-04884	11-15-2002	Mona Liza Buencamino	Pamplona Tres, Las Piñas City	Land	₱396,000.00
T-27374	12-11-1991	Mona Liza Buencamino	Pamplona Tres, Las Piñas City	Land	₱115,500.00
T-36498	8-12-1993	Mona Liza Buencamino	Pamplona Tres, Las Piñas City	Land	₱165,000.00

E-011-09204	11-15-2002	Mona Liza Buencamino	Pamplona Tres, Las Piñas City	Building	₱1,872,200

On the other hand, the Sworn Statements of Assets, Liabilities and Net Worth (SALN) of Associate Justice Jurado, which are on file with the Sandiganbayan, contained the following information:

Year 2000

a. Real Properties

Kind	Location	Year Acquired	Mode of Acquisition	Assessed Value	Current Fair Market Value	Acquisition Cost	
						Land, Bldg., etc. Improvement	
Town house	Mand. City	1989	Cash	₱181,680	₱1M	₱350,000	₱650.000
Lots	Cagayan de Oro	1985		₱10,000	₱80,000		
Lots & Bldg.	Manuela Subd.	1988		₱300,000	₱5M	₱3M	₱2M
House & Lot	Cainta, Rizal	1996	Cash		₱800,000	₱500.000	₱300,000
House & Lot	Cainta	1997	Loan		₱1M	₱500,000	₱500,000
-do-	Rizal	1998	Loan		₱650,000		
TOTAL PROPERTIES: Six (6)							

Year 2001

a. Real Properties

Kind	Location	Year Acquired	Mode of Acquisition	Assessed Value	Current Fair Market Value	Acquisition Cost	
						Land, Bldg., etc. Improvement	
Town house	Mand. City	1989	Cash	₱181,680	₱1M	₱350,000	₱650,000
Lots	Cagayan de Oro	1985		₱10,000	₱80,000		
Lots & Bldg.	Manuela Subd.	1988		₱300,000	₱5M	₱3M	₱2M
House & Lot	Cainta	1996	Cash		₱800,000	₱500,000	₱300,000
House & Lot	Rizal	1997	loan		₱1M	₱500,000	₱500,000

House & Lot	Rizal	1998	Loan		₱650,000		
TOTAL PROPERTIES: Six (6)							

Year 2002

a. Real Properties

Kind	Location	Year Acquired	Mode of Acquisition	Assessed Value	Current Fair Market Value	Acquisition Cost	
						Land, Bldg., etc. Improvement	
Town house	Mand. City	1989	Cash	₱181,680	₱1M	₱350,000	₱650,000
Lots	Cagayan de Oro	1985		₱10,000	₱80,000		
Lots & Bldg.	Manuela Subd.	1988	Loan	₱300.000	₱5M	₱3M	₱2M
House & Lot	Cainta, Rizal	1996	Cash		₱800,000	₱500,000	₱300,000
House & Lot	-do-	1997	loan		₱1M	₱500,000	₱500,000
House & Lot	-do-	1998	loan		₱650,000		
TOTAL PROPERTIES: Six (6)							

Year 2003

a. Real Properties

Kind	Location	Year Acquired	Mode of Acquisition	Assessed Value	Current Fair Market Value	Acquisition Cost	
						Land, Bldg., etc. Improvement	
Town house	Mand. City	1989	Cash	₱181,680	₱1million	₱350,000	₱650,000
Lots	Cagayan de Oro	1985		₱10,000	₱80,000		
Lots & Bldg.	Manuela Subd.	1988	Loan	₱300,000	₱5million	₱3million	₱2million
House & Lot	Cainta,	1996	Cash		₱800,000	₱500,000	₱300,000
House & Lot	Rizal	1997	loan		₱1million	₱500,000	₱500,000
House & Lot	Rizal	1998	loan		₱650,000	₱500,000	₱500,000
TOTAL PROPERTIES: Six (6)							

Year 2004

a. Real Properties

Kind	Location	Year Acquired	Mode of Acquisition	Assessed Value	Current Fair Market Value	Acquisition Cost	
						Land, Bldg., etc. Improvement	
Town house	Mand. City	1989	Cash		₱1million	₱350,000	₱650,000
Lots	Cagayan de Oro	1985	Cash		₱200,000	₱200,000	
Lots & Bldg.	Manuela Subd.	1988	Loan		₱5million	₱3million	₱2million
House & Lot	Cainta	1996	Cash		₱1million	₱500,000	₱300,000
House & Lot	Rizal	1997	Loan		₱1million	₱500,000	₱300,000
House & Lot	Rizal	1998	Loan		₱1million	₱500,000	₱300,000
TOTAL PROPERTIES: Six (6)							

Year 2005

a. Real Properties

Kind	Location	Year Acquired	Mode of Acquisition	Assessed Value	Current Fair Market Value	Acquisition Cost	
						Land, Bldg., etc. Improvement	
Town house	Mand. City	1989	Inst.		₱1million	₱350,000	₱650,000
Lots	Cagayan de Oro	1985	Cash		₱200,000	₱200,000	
Lots & Bldg.	Manuela Subd.	1988	Loan		₱5million	₱3million	₱2million
House & Lot	Cainta	1996	Loan		₱1million	₱500,000	₱300,000
House & Lot	Rizal	1997	Loan		₱1million	₱500,000	₱300,000
House & Lot	Rizal	1998	Loan		₱1million	₱500,000	₱300,000
TOTAL PROPERTIES: Six (6)							

Year 2008

a. Real Properties

Kind	Location	Year Acquired	Mode of Acquisition	Assessed Value	Current Fair Market Value	Acquisition Cost	
						Land, Bldg., etc. Improvement	
Lots	Cagayan de Oro	1985	Cash		₱1million		
House & Lot	Las Piñas	1988	Bank Loan		₱5million		
House & Lot	Cainta,	1996	Bank Loan		₱2million		
House & Lot	Pasig	2007	Pag-ibig Loan		₱4million		
Town house	Mand. City	1989	Installment		₱1.5million		
TOTAL PROPERTIES: Five (5)							

IV. Initial Assessment on Justice Jurado's case:

YEAR	PROPERTIES LISTED IN SALN [source: Sandiganbayan]	NO.OF PROPERTIES DISCOVERED	REMARKS [Overstated/Understated]
2000	6	7	Understated
2001	6	7	Understated
2002	6	14	Understated
2003	6	14	Understated
2004	6	14	Understated
2005	6	14	Understated
2008	5	16	Understated

As can be deduced, Justice Jurado's declaration of his properties in his SALNs from 2000 to 2008 (the Sandiganbayan did not provide his SALNs for 2006 and 2007) is understated when compared to the properties gathered by the Legal Office, OCA, for the same period. It is also worth noting that Justice Jurado was appointed Sandiganbayan Justice on 3 October 2003. Between 2002 and 2008, the disparity in the properties listed in his SALNs vis-à-vis the actual properties appeared to have considerably widened.

There is also the matter of TCT No. T-23272, a parcel of land in Pamplona Tres, Las Piñas City, which Justice Jurado co-owns with COC Buencamino. Records show that Justice Jurado is married to Welma G. Jurado.

Hence, there is a need for Justice Jurado to explain the inconsistent entries in his SALNs and why he co-owns a parcel of land in Las Piñas with COC Buencamino.

V. The Case of COC Buencamino

The SALNs of **COC Buencamino** contain the following entries:

Year 1992

A. Real Properties

Kind	Location	Year Acquired	Mode of Acquisition	Assessed Value	Current Fair Market Value	Acquisition Cost
						Land, Bldg., etc. Improvement
agrt'l	Cavite	1985	inherited		₱650/sq. m.	₱284,375
	(427.5 sq. m.)		(Undivided)			
res'l	Kaloocan	1985	inherited		₱7,000/ sq. m.	₱114,310
	(16.33 sq. m.)					
res'l	Las Piñas	1985	inherited		₱3,500/ sq. m.	₱2,642,500-1,000,000.00
	(755 sq.m.)					
TOTAL PROPERTIES: Three (3)						

Year 1993

A. Real Properties

Kind	Location	Year Acquired	Mode of Acquisition	Assessed Value	Current Fair Market Value	Acquisition Cost
						Land, Bldg., etc. Improvement
res'l	Kaloocan	1985	inherited		₱7,000/ sq. m.	₱114,310
	(16.33 sq. m.)					

agrt'l	Cavite	1985	inherited		₱1,000/ sq. m.	₱427,500	
	(427.5 sq. m.)						
res'l	Las Piñas (105 sq.m.)	1985			₱3,500/ sq. m.	0 ₱367,500	₱1,500,000.00
	(290 sq.m.)				₱3,500/ sq. m.	₱1,015,000	₱1,000,000.00
	(360 sq.m.)				₱3,500/ sq.m)	₱1,260,000.00	
TOTAL PROPERTIES: Five (5)							

Year 1994

A. Real Properties

Kind	Location	Year Acquired	Mode of Acquisition	Assessed Value	Current Fair Market Value	Acquisition Cost	
						Land, Bldg., etc.	Improvement
agrt'l	Cavite	1985	inherited			₱427,500	
res'l	Kaloocan	1985	inherited			₱114,310	₱14,775
res'l	Las Piñas						
	105 sq.m.				₱367,500		₱1,500,000.00
	290 sq.m.				₱1,015,000		₱1,000,000.00
	360 sq.m.				₱1,260,000		
	150 sq.m.				₱525,000		
TOTAL PROPERTIES: Six (6)							

Year 1995

A. Real Properties

Kind	Location	Year Acquired	Mode of Acquisition	Assessed Value	Current Fair Market Value	Acquisition Cost	
						Land, Bldg., etc.	Improvement
agrt'l	Cavite	1985	inherited			₱427,500	
res'l	Kaloocan	1985	inherited			₱114,310	₱14,775
res'l	Las Piñas						

			(105 sq.m.)		₱367,500		₱1,500,000.00
			(290 sq.m.)		₱1,015,000		₱1,000,000.00
			(360 sq.m.)		₱1,260,000		
		1993	(150 sq.m.)		₱525,000		
TOTAL PROPERTIES: Six (6)							

Year 1996

A. Real Properties

Kind	Location	Year Acquired	Mode of Acquisition	Assessed Value	Current Fair Market Value	Acquisition Cost	
						Land, Bldg., etc. Improvement	
agrt'l	Cavite	1985	inherited	(458.33/ sq.m.)	₱687,500		
res'l	Caloocan	1985	-do-	(16.5/sq.m.)	₱264,000	₱114,310	₱14,775
res'l	Las Piñas	1985	-do-	(105/sq.m.)	₱472,500	₱36,750	₱1,500,000.00
				(290/sq.m.)	₱1,305,000	₱101,500	₱1,000,000.00
				(360/sq.m.)	₱1,620,000	₱126,000	
		1993	sale	(150/sq.m.)	₱675,000	₱300,000	
TOTAL PROPERTIES: Six (6)							

Year 1997

A. Real Properties

Kind	Location	Year Acquired	Mode of Acquisition	Assessed Value	Current Fair Market Value	Acquisition Cost	
						Land, Bldg., etc. Improvement	
residential	Caloocan	1985	inherited		₱264,000		
agricultural	Cavite	1985	-do-			₱687,500	
residential	Las Piñas	1991	sale	₱34,800	₱1,305,000	₱87,000.00	
		1992	constructed		₱1,000,000		₱1,000,000
		1991	sale	₱12,600	₱472,500	₱31,500.00	
		1993	constructed		₱1,500,000		₱1,500,000
		1991	sale	₱43,200	₱1,620,000	₱108,000.00	
		1993	sale	₱18,000	₱675,000	₱45,000.00	
TOTAL PROPERTIES: Eight (8)							

Year 1998

A. Real Properties

Kind	Location	Year Acquired	Mode of Acquisition	Assessed Value	Current Fair Market Value	Acquisition Cost	
						Land, Bldg., etc. Improvement	
rest'l lot	Caloocan	1985	inherited		₱264,000.00		
rest'l lot	Las Piñas	1991	sale	₱34,800	₱1,305.000	₱87,000.00	
res'l lot	Las Piñas	1991	sale	₱12,600	₱472,500	₱31,500	
res'l lot	Las Piñas	1991	sale	₱43,200	₱1620,000	₱108,000.00	
res'l apt.	Las Piñas	1992	constructed	₱297,000	₱990,000		₱1,000.00
res'l apt	-do-	1993	constructed	₱159,750	₱1,500,00		₱1,500,00
res'l lot	-do-	1993	sale	₱18,000	₱675,000	₱45,000	
res'l apt.	-do-	1998	constructed	P662,270	₱1,892,200		₱1,892,200
TOTAL PROPERTIES: Eight (8)							

Year 1999

A. Real Properties

Kind	Location	Year Acquired	Mode of Acquisition	Assessed Value	Current Fair Market Value	Acquisition Cost	
						Land, Bldg., etc. Improvement	
res'l lot	Caloocan	1985	inherited		₱264,000.00		
res'l lot	Las Piñas	1991	sale	₱34,800	₱1,305,000	₱87,000.00	
res'l lot	Las Piñas	1991	sale	₱12,600	₱472,500	₱31,500	
res'l apt.	Las Piñas	1992	constructed	₱297,000	₱990,000		₱1,000,000
res'l lot	Las Piñas	1991	sale	₱43,200	₱1,620,000	₱108,000.00	
res'l apt.	Las Piñas	1993	constructed	₱159,750	₱1,500,000		₱1,500,000
res'l lot	Las Piñas	1993	sale	₱18,000	₱675,000	₱45,000	
res'l apt.	Las Piñas	1998	constructed	₱662,270	₱1,892,200		₱1,892,200
TOTAL PROPERTIES: Eight (8)							

Year 2000

A. Real Properties

Kind	Location	Year Acquired	Mode of Acquisition	Assessed Value	Current Fair Market Value	Acquisition Cost	
						Land, Bldg., etc. Improvement	
Res'l lot	Caloocan	1985 & 2000	inherited	₱12,162	₱626,528		
Res'l lot	Las Piñas	1991	sale	₱34,800	₱1,305,000	₱87,000.00	
Res'l lot	Las Piñas	1991	sale	₱12,600	₱472,500	₱31,500	
Res'l lot	Las Piñas	1991	sale	₱43,200	₱1,620,000	₱108,000	
Res'l lot	Las Piñas	1993	sale	₱18,000	₱675,000	₱45,000	
Res'l apt.	Las Piñas	1992	constructed	₱297,000	₱990,000		₱1,000,000
Res'l apt.	Las Piñas	1993	constructed	₱159,750	₱639,000		₱1,500,000
Res'l apt.	Las Piñas	1998	constructed	₱662,270	₱1,892,200		₱1,892,200
TOTAL PROPERTIES: Eight (8)							

Year 2002

A. Real Properties

Kind	Location	Year Acquired	Mode of Acquisition	Assessed Value	Current Fair Market Value	Acquisition Cost	
						Land, Bldg., etc. Improvement	
Res'l lot	Caloocan	1985 & 2000	inherited	₱9,962	₱783,160		
Res'l lot	Las Piñas	1991	sale	₱34,800	₱1,305,000	₱87,000.00	
Res'l lot	Las Piñas	1991	sale	₱12,600	₱472,500	₱31,500	
Res'l lot	Las Piñas	1991	sale	₱43,200	₱1,620,000	₱108,000	
Res'l apt.	Las Piñas	1992	constructed	₱297,000	₱990,000		₱1,000,000
Res'l lot	Las Piñas	1993	sale	₱18,000	₱675,000	₱150,000	
Res'l apt.	Las Piñas	1993	constructed	₱159,750	₱639,000		₱1,500,000
Res'l apt.	Las Piñas	1998	constructed	₱662,270	₱1,892,200		₱1,892,200
TOTAL PROPERTIES: Eight (8)							

Year 2003

A. Real Properties

Kind	Location	Year Acquired	Mode of Acquisition	Assessed Value	Current Fair Market Value	Acquisition Cost	
						Land, Bldg., etc.	Improvement
Res'l lot	Caloocan	1985 & 2000	inherited	₱9,962	₱783,160		
Res'l lot	Las Piñas	1991	sale	₱34,800	₱1,305,000	₱87,000.00	
Res'l lot	Las Piñas	1991	sale	₱12,600	₱472,500	₱31,500	
Res'l lot	Las Piñas	1991	sale	₱43,200	₱1,620,000	₱108,000	
Res'l apt.	Las Piñas	1992	constructed	₱297,000	₱990,000	₱1,000,000	
Res'l lot	Las Piñas	1993	sale	₱18,000	₱675,000	₱150,000	
Res'l apt.	Las Piñas	1993	constructed	₱159,750	₱639,000		₱1,500,000
Res'l apt.	Las Piñas	1998	constructed	₱662,270	₱1,892,200		₱1,892,200
TOTAL PROPERTIES: Eight (8)							

Year 2004

A. Real Properties

Kind	Location	Year Acquired	Mode of Acquisition	Assessed Value	Current Fair Market Value	AcquisitionCost	
						Land, Bldg., etc.	Improvement
Res'l lot	Caloocan	1985 & 2000	inherited	₱9,962	₱783,160		
Res'l lot	Las Piñas	1991	sale	₱34,800	₱1,305,000	₱87,000.00	
Res'l lot	Las Piñas	1991	sale	₱12,600	₱472,500	₱31,500	
Res'l lot	Las Piñas	1991	sale	₱43,200	₱1,620,000	₱108,000	
Res'l apt.	Las Piñas	1992	constructed	₱297,000	₱990,000		₱1,000,000
Res'l lot	Las Piñas	1993	sale	₱ 18,000	₱675,000	₱150,000	
Res'l apt.	Las Piñas	1993	constructed	₱159,750	₱639,000		₱1,500,000

Res'l apt.	Las Piñas	1998	constructed	₱662,270	₱1,892,200		₱1,892,200
TOTAL PROPERTIES: Eight (8)							

Year 2005

A. Real Properties

Kind	Location	Year Acquired	Mode of Acquisition	Assessed Value	Current Fair Market Value	Acquisition cost Land Bldg., etc. Improvement	
Res'l lot	Caloocan	1985 & 2000	inherited	₱9,962	₱783,160		
Res'l lot	Las Piñas	1991	sale	₱34,800	₱1,305,000	₱87,000.00	
Res'l lot	Las Piñas	1991	sale	₱12,600	₱472,500	₱31,500	
Res'l lot	Las Piñas	1991	sale	₱43,200	₱1,620,000	₱108,000	
Res'l apt.	Las Piñas	1992	constructed	₱297,000	₱990,000		₱1,000,000
Res'l lot	Las Piñas	1993	sale	₱18,000	₱675,000	₱150,000	
Res'l apt.	Las Piñas	1993	constructed	₱159,750	₱639,000		₱1,500,000
Res'l apt.	Las Piñas	1998	constructed	₱662,270	₱1,892,200		₱1,892,200
TOTAL PROPERTIES: Eight (8)							

Year 2006

A. Real Properties

Kind	Location	Year Acquired	Mode of Acquisition	Assessed Value	Current Fair Market Value	Acquisition Cost Land, Bldg., etc. Improvement	
Res'l lot	Caloocan	1985 & 2000	inherited	₱9,962	₱783,160		
Res'l lot	Las Piñas	1991	Sale	₱34,800	₱1,305,000	₱87,000.00	
Res'l lot	Las Piñas	1991	Sale	₱12,600	₱472,500	₱31,500	
Res'l lot	Las Piñas	1991	Sale	₱43,200	₱1,620,000	₱108,000	
Res'l apt.	Las Piñas	1992	Constructed	₱297,000	₱990,000		₱1,000,000
Res'l lot	Las Piñas	1993	Sale	₱18,000	₱675,000	₱150,000	

Res'l apt.	Las Piñas	1993	Constructed	₱159,750	₱639,000		₱1,500,000
Res'l apt.	Las Piñas	1998	Constructed	₱662,270	₱1,892,200		₱1,892,200
TOTAL PROPERTIES: Eight (8)							

Year 2007

A. Real Properties

Kind	Location	Year Acquired	Mode of Acquisition	Assessed Value	Current Fair Market Value	Acquisition Cost	
						Land, Bldg., etc. Improvement	
Res'l lot	Caloocan	1985 & 2000	inherited	₱9,962	₱783,160		
Res'l lot	Las Piñas	1991	Sale	₱34,800	₱1,305,000	₱87,000.00	
Res'l lot	Las Piñas	1991	Sale	₱12,600	₱472,500	₱31,500	
Res'l lot	Las Piñas	1991	Sale	₱43,200	₱1,620,000	₱108,000	
Res'l apt.	Las Piñas	1992	Constructed	₱297,000	₱990,000		₱1,000,000
Res'l lot	Las Piñas	1993	Sale	₱18,000	₱675,000	₱150,000	
Res'l apt.	Las Piñas	1993	Constructed	₱159,750	₱639,000		₱1,500,000
Res'l apt.	Las Piñas	1998	Constructed	₱662,270	₱1,892,200		₱1,892,200
TOTAL PROPERTIES: Eight (8)							

Year 2008

A. Real Properties

Kind	Location	Year Acquired	Mode of Acquisition	Assessed Value	Current Fair Market Value	Acquisition Cost	
						Land, Bldg., etc. Improvement	
Res'l lot	Caloocan	1985 & 2000	inherited	₱9,962	₱783,160		
Res'l lot	Las Piñas	1991	Sale	₱34,800	₱1,305,000	₱87,000.00	
Res'l lot	Las Piñas	1991	Sale	₱12,600	₱472,500	₱31,500	
Res'l lot	Las Piñas	1991	Sale	₱43,200	₱1,620,000	₱108,000	
Res'l apt.	Las Piñas	1992	Constructed	₱297,000	₱990,000		₱1,000,000
Res'l lot	Las Piñas	1993	Sale	₱18,000	₱675,000	₱150,000	
Res'l apt.	Las Piñas	1993	Constructed	₱159,750	₱639,000		₱1,500,000
Res'l apt.	Las Piñas	1998	Constructed	₱662,270	₱1,892,200		₱1,892,200
TOTAL PROPERTIES: Eight (8)							

Initial assessment on COC Buencamino's case shows inconsistencies in her SALNs which border on possible irregularities.

In her 1992 SALN, she mentioned only one (1) property in Las Piñas with an area of 755 square meters. The investigation, however, showed that before 1992, she had acquired three (3) properties in Las Piñas bearing TCT Nos. T-23272 (issued in 1991, co-owns with Justice Jurado), T-22005 (issued in 1990), and T-27374 (issued in 1991).

In her 1993 SALN, COC Beuncamino divided into three (3) lots the 755-square meter property in Las Piñas which she had declared as one (1) lot in her 1992 SALN. This appears to confirm the investigating team's findings that even before 1992, she already had three (3) properties in Las Piñas covered by separate TCTs. The three (3) divided lots in Las Piñas remained in her SALN for 1994, 1995 and 1996. Thus, there is likewise a need for COC Buencamino to explain these perceived discrepancies, and why she co-owns a property in Las Piñas with Justice Jurado.[7]

The Position of Justice Jurado

In his Comment and Explanation,[8] Justice Jurado asserted that the properties located in Las Piñas City were declared and aggregately referred to as a single item in his SALN for the years 2000 to 2005 and 2008. Specifically, Justice Jurado averred that the properties covered by TCT Nos. T-31407, T-31408 and T-31409 were singly declared as "Lots & Bldg" in his SALN because all these titles were actually derived from a single mother title, TCT No. T-23266.

With respect to the property covered by TCT No. T-23272, which he co-owned with Atty. Buencamino, Justice Jurado claimed that the said property was a road lot, but it was nonetheless declared in his SALN as it was the road lot that passed along the properties covered by TCT Nos. T-31407, T-31408, T-31409, T-31410, and T-31411.

As to the properties covered by seven *(7)* Tax Declarations particularly E-011-04889, E-011-04891, E-011-04893, E-011-04894, E-011-04895, E-011-06764, and E-011-06763, Justice

[7] *Id*. at 24-35.

[8] *Id*. at 155-211.

Jurado pointed out that these tax declarations represented the improvements on the land covered by TCT Nos. T-31407, T-31408, T-31409, T-31410, and T-31411. Tax Declaration Nos. E-011-04891, E-011-04889, E-011-04893, E-011-06764, and E-011-06763 referred to the improvements erected on the land covered by TCT Nos. T-31407, T-31408, T-31409, T-31410, and T-31411 while Tax Declaration Nos. E-011-04894 and E-011-04895 covered TCT Nos. T-31410 and T-31411, respectively.

As to the real property covered by TCT No. T-23269, Justice Jurado explained that it was not declared in his SALN because the property was already sold to Ma. Paz Saldua *(Saldua)* on August 15, 1990, payable on installment for a period of five *(5)* years. Saldua, however, failed to transfer the title in her name. Justice Jurado found out that the title of the real property was not transferred when he received the Notice of Delinquency from the Assessor's Office of Las Piñas City prompting him to write a letter to Saldua to remind her of her obligation to pay the realty taxes as the new owner of the property. Later, he learned that she passed away on September 22, 1999. Justice Jurado submitted a copy of the Land Purchase Agreement[9] as proof of the sale.

Justice Jurado bewailed that this was *not the first time* that he was required to explain how these properties were acquired. He disclosed that the National Bureau of Investigation *(NBI)*, upon the request of the OCA, had previously conducted an investigation on these properties and recommended the closure and termination of the complaint for lack of basis.

On the charge of immorality, Justice Jurado vehemently denied it and stressed that his relationship with Atty. Buencamino was purely professional. He explained that TCT No. T-23272 was registered under his name and that of Atty. Buencamino because they entered into a buy, develop and sell transaction over a real property owned by the Buencamino clan; that from the

[9] Annex "8" of the Comment, *id*. at 262-264.

proceeds of their business transaction, he and Atty. Buencamino also purchased Lot 5 of the Buencamino property, covered by TCT No. S-72435 and subdivided it into seven lots consisting of Lot 5-A, Lot 5-B, Lot 5-C, Lot 5-D, Lot 5-E, Lot 5-F and Lot 5-G; that Lot 5-G was covered by TCT No. T-23272; that he and Atty. Buencamino divided Lots 5-A to 5-F among themselves and agreed to own Lot 5-G in common because it was a road lot that transversed Lots 5-A to 5-F. Justice Jurado averred that his business endeavor with Atty. Buencamino was with the knowledge and consent of his spouse.

On TD-00-CA-0003-05860[10] and Tax Declaration No. 00-CA-0003-05855, Justice Jurado explained that these were the tax declarations on the land and improvements covered by TCT No. PT-104972, which was already sold to Junida C. Domingo *(Domingo)* on February 16, 1998. Thus, it was excluded in the contested SALNs.

With regard to the properties covered by TD-00-CA-0003-07277 and TD-00-CA-0003-07278, Justice Jurado reported that these were covered by TCT No. 605198, which was continuously and repeatedly stated in his SALNs. Justice Jurado claimed that these properties were acquired in 1996 from his sister-in-law, Eva M. Godoy, by paying ₱100,000.00 as downpayment and by subsequently paying the bank loan on May 13, 1999 amounting to ₱638,706.00. He explained that the ₱100,000.00 downpayment came from his and his wife's savings; that in order to pay the ₱638,706.00, he obtained a loan from PS Bank amounting to ₱590,000.00; and that the difference of ₱48,706.00 came from their savings.

On the Mandaluyong property, Justice Jurado clarified that TCT No. 2225 and TD-23-00495 referred to the same property, the former being the title that covered the land and the latter, the tax declaration that covered the improvement thereon. Justice Jurado swore that this property was included in his SALN from years 2000-2008; and that it was sold on August

[10] Erroneously referred to TD-00-CA-0003-05880 on page 2 of the OCA Memorandum, *id*. at 25.

23, 2013 to spouses Tristan and Michelle Saraza. According to Justice Jurado, this property was acquired, through installment basis, from Sagulan, Inc., when he was not yet a member of the Judiciary for the amount of ₱340,000.00.

As to the property covered by PT-135396 situated in Santolan, Pasig City, Justice Jurado asserted that this was declared in his SALNs as soon as he acquired it in 2007. According to him, the source of funds used to obtain the land was a ₱1,000,000.00 PS Bank loan while the source of fund used to build the improvements was a ₱2,000,000.00 Pag-IBIG loan.

The Position of Atty. Buencamino

In her Comment and Explanation,[11] Atty. Buencamino lamented that this was the *third time* that she was being made to comment on the allegation of immorality and unexplained wealth. Just like the complaint in the present case, the complaints before the Ombudsman in 1997 and the NBI in 2002 were anonymous and similar. Atty. Buencamino surmised that these cases were filed as leverage by Atty. Armando C. De Asa, Sr., a dismissed judge of MeTC, Branch 51, Caloocan City, because of the sexual harassment case she and several other victims had filed against him.

Atty. Buencamino denied any immoral relationship with Justice Jurado. She asserted that Justice Jurado, his wife and siblings were family friends of the Buencamino clan and, in fact, he was the godfather of her nieces and nephews.

Atty. Buencamino admitted owning the above-enumerated real properties registered under her name and insisted that all these properties were declared in her SALNs. She, however, clarified that TCT No. T-22005[12] and E-011-0667[13] referred to a single property; that E-011-0667 was the tax declaration of the improvement that was erected on the land covered by TCT

[11] *Id*. at 384-408.

[12] Annex "CC" of the OCA Report, *id*. at 73.

[13] Annex "EE" of the OCA Report, *id*. at 75.

No. 22005; E-011-04884[14] was the tax declaration on the land covered by TCT No. T-23267;[15] and E-011-09204[16] was the tax declaration on the building constructed on the land covered by TCT No. T-36498.[17]

Atty. Buencamino claimed that a copy of TD No. E-011-09204 marked as Annex "JJ,"[18] obtained by the OCA, was *altered*. She asserted that TD No. E-011-09204[19] was the tax declaration representing the improvements on the real property covered by TCT No. T-36498 with E-011-06718 as the tax declaration on the land; that the improvement was erected on a land she owned with TD No. E-011-06718 and not on TD No. E-011-09204 as shown in Annex "JJ" of the OCA. She submitted a certified true copy of TD E-011-09204[20] showing that the improvement was "located in the land of the same name under TDP/ARP No. E-011-06718."

On the charge of unexplained wealth, Atty. Buencamino contended that the above-enumerated properties were acquired through inheritance, from her salaries in the Judiciary and other legitimate sources. Atty. Buencamino reiterated the narration of Justice Jurado that sometime in 1988, they entered into a business venture to develop and sell the properties of her relatives, particularly Lot 4 with TCT No 72438 consisting of 1,983 sq. m., Lot 5 with TCT No 72435 consisting of 2,153 sq. m.; Lot 6 with TCT No 72430 consisting of 1,822 sq. m.; Lot 8 with TCT No 72441 consisting of 1,974 sq. m.; and Lot 9 with TCT No 72442 consisting of 1,718 sq. m. After the properties were developed and subdivided, the said properties were sold to

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[14] Annex "K" of the OCA Report, *id*. at 50.

[15] Annex "J" of the OCA Report, *id*. at 49.

[16] Annex "2" of the Comment Report, *id*. at 412.

[17] Annex "HH" of the OCA Report, *id*. at 108.

[18] *Id*. at 110.

[19] *Id*.

[20] Annex "2" of the Comment, *id*. at 412.

different buyers in either cash or installment basis. Atty. Buencamino claimed that she and Justice Jurado were able to gain from the business venture, which she invested by purchasing the properties that were left unsold, on which she eventually constructed residential apartments.

The Court's Ruling

The Court finds the complaint bereft of merit.

In administrative cases, the quantum of proof necessary for the finding of guilt is substantial evidence.[21] Substantial evidence is more than a mere scintilla of evidence; it is the amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion.[22]

It must be emphasized that the filing of SALNs is obligatory on the part of all officials and employees of the government. A SALN is a *pro forma* document which must be completed and submitted under oath by the declarant attesting to his/her total assets and liabilities, including businesses and financial interests that make up his/her net worth.[23] Republic Act *(R.A.)* No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, mandates all officials and employees in the government service to accomplish and submit, under oath, declarations of their assets, liabilities, net worth and business interests including those of their spouse and unmarried children below eighteen *(18)* years of age. Section 8 thereof specifically provides:

> Section 8. Statements and Disclosure. - Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

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[21] *Bondoc v. Bulosan*, 552 Phil. 526, 534 (2007).

[22] *Navarro v. Office of the Ombudsman*, G.R. No. 210128, August 17, 2016.

[23] *Id.*

(A) Statements of Assets and Liabilities and Financial Disclosure. - All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.

The two documents shall contain information on the following:

(a) real property, its improvements, acquisition costs, assessed value and current fair market value;
(b) personal property and acquisition cost;
(c) all other assets such as investments, cash on hand or in banks, stocks, bonds, and the like;
(d) liabilities, and;
(e) all business interests and financial connections.

The documents must be filed:

(a) within thirty (30) days after assumption of office;
(b) on or before April 30, of every year thereafter; and
(c) within thirty (30) days after separation from the service.

All public officials and employees required under this section to file the aforestated documents shall also execute, within thirty (30) days from the date of their assumption of office, the necessary authority in favor of the Ombudsman to obtain from all appropriate government agencies, including the Bureau of Internal Revenue, such documents as may show their assets, liabilities, net worth, and also their business interests and financial connections in previous years, including, if possible, the year when they first assumed any office in the Government.

Husband and wife who are both public officials or employees may file the required statements jointly or separately.

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Thus, upon assumption of office and every year thereafter, it is mandatory for all public officials and employees, whether regular or co-terminous, to file their SALNs.

In completing the SALN, particularly the portion requiring the declaration of real properties, it is compulsory for the declarant to disclose the kind, location, year and mode of acquisition, the assessed value, current fair market value and the acquisition cost of the property including the improvements thereon. Before 2011, public officers and employees accomplished their SALNs by accomplishing the *pro forma* form drawn up by the Civil Service Commission *(CSC)*. During the time, a general statement of one's assets and liabilities would suffice, as the declarant had no obligation to enumerate in detail his assets and liabilities.[24]

In order to make the SALN a more effective tool for transparency and accountability, the CSC created a technical working group for the revision and amendments on the use of SALN. On July 8, 2011, the CSC issued Resolution No. 1100902 prescribing the guidelines in accomplishing the revised SALN. The implementation of the revised SALN was, however, deferred due to several requests from the private sectors, the House Committee on Civil Service and Professional Regulation, and the Senate Committee on Civil Service and Government Reorganization, citing that government workers had not fully comprehended the requirements in the filling out of the new SALN form and for lack of sufficient knowledge on how to accomplish it.[25]

Thereafter, CSC Resolution No. 1300174, dated January 24, 2013, was circulated prescribing the new SALN Form and Guidelines in the Filling Out of the SALN Form. This was, however, revised again thru CSC Resolution No. 1500088, dated January 23, 2015. CSC Resolution No. 1500088 is the current SALN that must be accomplished by all government officials and employees. Unlike the old form, the new SALN form is more restrictive as it requires a more detailed and sworn statement of the declarant's assets, liabilities and net worth, including disclosure of business interests, financial connections, relatives

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[24] *Id*.

[25] CSC Resolution No. 1200480, dated March 15, 2012.

in the government service, and amount and sources of income for the preceding calendar year. With respect to real property, the declarant is mandated to disclose the description and the exact location of the property involved.

The SALN of Justice Jurado

Based on the investigation, the OCA was of the view that Justice Jurado understated his assets in the SALN for the years 2000-2005 and 2008; and that after his appointment as Justice of the Sandiganbayan on October 3, 2003, the disparity of his properties listed in his SALN *vis-à-vis* the actual properties discovered during the investigation had considerably widened.

A scrutiny of Justice Jurado's SALN from the years 2000-2005 and 2008, however, would reveal that all the properties enumerated by the OCA were consistently declared albeit collectively in all his SALNs. If only the investigation team conscientiously studied the documents it gathered, it would discover that Justice Jurado's real properties did not increase significantly.

From its investigation, the OCA noted that for the years 2000 and 2001, Justice Jurado declared a total of six *(6)* properties but it discovered a total of seven *(7)* properties; for the years 2002-2005, six (6) properties were declared but a total of fourteen *(14)* properties were discovered; and for the year 2008, he declared five *(5)* properties in his SALN but was found to actually own a total of sixteen *(16)* properties, as follows:

TCT/Tax Declaration	Date issued:	Location	Description
1. TCT No. T-31408	9-30-1992	Las Piñas City	Land
2. TCT No. T-31409	9-30-1992	Las Piñas City	Land
3. TCT No. T-31407	9-30-1992	Las Piñas City	Land
4. TCT No. T-23269	3-21-1991	Las Piñas City	Land
5. TCT No. 2225	5-11-1989	Mandaluyong City	Land
6. TD No. D-023-00495	1994	Mandaluyong City	Residential Apartment
7. TD No. E-011-04891	11-15-2002	Las Piñas City	Building

8. TD No. E-011-04889	11-15-2002	Las Piñas City	Building
9. TD No. E-011-04893	11-15-2002	Las Piñas City	Building
10. TD No. E-011-06764	11-15-2002	Las Piñas City	Building
11. TD No. E-011-04895	11-15-2002	Las Piñas City	Land
12. TD No. E-011-06763	11-15-2002	Las Piñas City	Building
13. TD No. E-011-04894	11-15-2002	Las Piñas City	Land
14. PT-135396	6-26-2007	Santolan, Pasig	Land
15. TD 00- CA-0003-05860	10-30-2008	Cainta, Rizal	Building
16. TD 00- CA-0003-05855	10-30-2008	Cainta, Rizal	Land

In the years 2000-2001, it appears from the enumeration above that Justice Jurado owned a total of seven (7) real properties [items 1-7 in the table]. Nonetheless, a closer study of the records would reveal that items 5 and 6 refer to a single real property because TD No. D-023-00495[26] was the tax declaration on the improvement that was constructed on the land covered by TCT No. 2225.[27]

With respect to item No. 4 referring to the real property covered by TCT No. T-23269,[28] the Court agrees with Justice Jurado that it need not be declared in the SALN because it was previously sold to Saldua on August 15, 1990 as shown by the Land Purchase Agreement.[29]

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[26] Annex "O" of the OCA Report, *rollo*, p. 57.

[27] Annex "M" of the OCA Report, *id.* at 52-55.

[28] Annex "H", *id.* at 47; Annex "9" of the Comment, *id.* at 265-268.

[29] Annex "8" of the Comment, *id.* at 262-264.

With regard to the real properties purportedly discovered by the OCA investigating team for the years 2002-2005 [items 1-14 in the table], again, the OCA erroneously counted the land titles and the corresponding tax declarations on the improvements/building as separate and distinct properties. To illustrate,

- TD No. E-011-04891[30] under [item 7] was the tax declaration covering the improvement/building built on the land covered by TCT No. T-31408[31] under item no. 1;
- TD No. E-011-04889[32] [item 8] was the tax declaration on the building erected on TCT No. T-31407[33] [item 3];
- TD No. E-011-04893,[34] [item 9] was the tax declaration covering the building erected on TCT No. T-31409[35] [item 2];
- TD No. E-011-06764[36] [item 10] was the tax declaration on the building erected under TD No. E-011-04895[37] [item no. 11] ; and

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[30] Annex "T" of the OCA Report, *id*. at 64; Annex "7" of the Comment, *id*. at 255.

[31] Annex "B" of the OCA Report, *id*. at 41; Annex "3-a" of the Comment, *id*. at 225-229.

[32] Annex "J" of the OCA Report, *id*. at 65; Annex "7-a" of the Comment, *id*. at 256.

[33] Annex "F" of the OCA Report, *id*. at p. 45; Annex "3" of the Comment, *id*. at 220-224.

[34] Annex "V" of the OCA Report, *id*. at 66; Annex "7-b" of the Comment, *id*. at 257.

[35] Annex "D" of the OCA Report, *id*. at 43; Annex "3-b" of the Comment, *id*. at 230-234.

[36] Annex "W" of the OCA Report, *id*. at 67; Annex "7-c" of the Comment, *id*. at 258.

[37] Annex "Y" of the OCA Report, *id*. at 69; Annex "7-c" of the Comment, *id*. at 260.

- TD No. E-011-06763[38] [item 12] referred to the tax declaration on the building erected on TD No. E-011-04894[39] [item 13].

On his 2008 SALN, the OCA, again was inaccurate when it counted the last two items separately for the same reason that both TD 00-CA-0003-05855[40] and TD 00-CA-0003-05860[41] represented the tax declarations on the land and improvement on the real property covered by TCT No. PT-104972.[42] This property was rightfully excluded from the SALNs of Justice Jurado because it had been sold to Domingo on February 16, 1998, as shown in the annotation appearing on the second page of the title. In fact, Justice Jurado submitted a copy of TCT No. PT-104972 which had been canceled by reason of the said sale.

Thus, from the evidence gathered and presented before the Court, it can be deduced that Justice Jurado actually owned five *(5)* real properties in Las Piñas City which were collectively declared in his SALN for the years 2000-2005 and 2008; one property each in Mandaluyong City; Cainta, Rizal; and Pasig City.

The Las Piñas Property

From the evidence presented, the five (5) properties of Justice Jurado in Las Piñas City came from TCT No. 23266,[43] a 360 sq. m. lot which was originally part and parcel of a

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[38] Annex "X" of the OCA Report, *id.* at 68; Annex "7-d" of the Comment, *id.* at 259.

[39] Annex "Z" of the OCA Report, *id.* at 70; Annex "7-f" of the Comment, *id.* at 261.

[40] Annex "S" of the OCA Report, *id.* at 63; Annex "21" of the Comment, *id.* at 318.

[41] Annex "R" of the OCA Report, *id.* at 62; Annex "24" of the Comment, *id.* at 335.

[42] Annex "22" of the Comment, *id.* at 319-326; Annex "22" of the Comment, *id.* at 319.

[43] Annex "4" of the Comment, *id.* at 243-246.

bigger estate of the Buencamino family known as Lot 5, covered by TCT No. S-72435.[44]

In 1991, Justice Jurado and Atty. Buencamino bought Lot 5 and subdivided it into seven *(7)* portions denominated as Lots 5-A to 5-G. Justice Jurado became the owner of Lots 5-A, 5-C and 5-D and Atty. Buencamino acquired Lots 5-B, 5-E and 5-F. Because Lot 5-G, which was covered by TCT No. 23272,[45] was a road lot that traversed Lots 5-A to 5-F, Justice Jurado and Atty. Buencamino decided to own it in common.

With respect to Lot 5-A, evidence would show that it was covered by TCT No. T-23266 with an area of 360 sq. m. Justice Jurado subdivided Lot 5-A into five lots, as follows:

Title No.	Area	Tax Declaration No.
1. T-31407[46]	56 sq. m.	TD No. E-011-04888 (Land)[47] TD No. E-011-04889 (Improvement)[48]
2. T-31408[49]	56 sq. m.	TD No. E-011-04890 (Land)[50] TD No. E-011-04891 (Improvement)[51]
3. T-31409[52]	56 sq. m.	TD No. E-011-04892 (Land)[53] TD No. E-011-04893 (Improvement)[54]

[44] Annex "5" of the Comment, *id*. at 247-250.

[45] Annex "AA" of the OCA Report, *id*. at 71; Annex "6" of the Comment, *id*. at 251-252.

[46] Annex "F", id. at 45; Annex "3" of the Comment, *id*. at 220-224.

[47] Annex "G", *id*. at 46.

[48] Annex "J", *id*. at 65; Annex "7-a" of the Comment, *id*. at 256.

[49] Annex "B", *id*. at 41; Annex "3-a" of the Comment, *id*. at 225-229.

[50] Annex "C", *id*. at 42.

[51] Annex "T", *id.* at 64; Annex "7" of the Comment, *id.* at 255.

[52] Annex "D", *id.* at 43; Annex "3-b" of the Comment, *id.* at 230-234.

[53] Annex "E", *id*. at 44.

[54] Annex "V", *id*. at 66; Annex "7-b" of the Comment, *id*. at 257.

4. T-31410[55]	76 sq. m.	TD No. E-011-04894 (Land)[56] TD No. E-011-06763 (Improvement)[57]
5. T-31411[58]	116 sq. m.	TD No. E-011-04895 (Land)[59] TD No. E-011-06764 (Improvement)[60]

First property, Lot 5-A which was covered by TCT No. T-31407 and TD No. E-011-04888, had an assessed value of ₱12,320.00 and market value of ₱61,600.00 as of November 2002. The improvement that was constructed on the said lot was covered by TD No. E-011-04889 with an assessed value of ₱75,200.00 and market value of ₱376,000.00.

Second property, Lot 5-B which was covered by TCT No. T-31408 and TD No. E-011-04890, had an assessed value of ₱12,320.00 and market value of ₱61,600.00. The improvement, covered by TD No. E-011-04891, had an assessed value of ₱79,040.00 and market value of ₱395,200.00.

Third property, Lot 5-C which was covered by TCT No. T-31409 and TD No. E-011-04892, had an assessed value of ₱12,320.00 and market value of ₱61,600.00. The improvement, covered by TD No. E-011-04893, had an assessed value of ₱60,800.00 and market value of ₱304,000.00.

Fourth property, Lot 5-D which was covered by TCT No. T-31410 and TD No. E-011-04894, had an assessed value of ₱16,720.00 and market value of ₱83,600.00. The improvement,

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[55] Annex "3-c" of the Comment, *id*. at 235-238.

[56] Annex "Z", *id*. at 70; Annex "7-f" of the Comment, *id*. at 261.

[57] Annex "X", *id*. at 68; Annex "7-d" of the Comment, . at 259.

[58] Annex "3-d" of the Comment, *id*. at 239-242.

[59] Annex "Y", *id*. at 69; Annex "7-e" of the Comment, *id*. at 260.

[60] Annex "W", *id*. at 67; Annex "7-c" of the Comment, *id*. at 258.

covered by TD No. E-011-06763, had an assessed value of ₱179,380.00 and market value of ₱717,500.00.

Fifth property, Lot 5-E which was covered by TCT No. T-31411 and TD No. E-011-04895, had an assessed value of ₱25,520.00 and market value of ₱127,600.00. The improvement, covered by TD No. E-011-06764, had an assessed value of ₱179,380.00 and market value of ₱717,500.00.

Taken together, these properties had a total assessed value of ₱79,200.00 and market value of ₱396,000.00 on the land, while the improvements had a total assessed value of ₱573,800.00 and market value of ₱2,510,200.00.

As can be gleaned from his SALN for the years 2000-2005 and 2008, Justice Jurado treated his Las Piñas property as one single item. He indicated "Lots and building" located in Manuela Subdivision, Las Piñas City, with an assessed value of ₱300,000.00 and current market value of ₱5 million, and acquisition cost amounting to ₱3 million and ₱2 million for the land, building and improvements. The Court finds satisfactory his explanation that these five real properties were aggregately declared as one item in his SALNs because they were derived from a single mother title. As earlier explained, the lumping of real properties in the old SALN form was not totally prohibited. The general statement of the declarant's assets, liabilities and net worth was deemed sufficient. Neither was this practice of "lumping" of properties in the SALN tantamount to making an untruthful statement for as long as the information provided was true and verifiable.[61]

The Property in Cainta, Rizal

Similarly, the property in Cainta, Rizal was consistently declared in his SALNs for the subject years. Justice Jurado had constantly declared a house and lot with a market value of ₱800,000.00 and a total acquisition cost of ₱800,000.00 for the years 2000-2003; and the market value increased to ₱1 million in the years 2004-2005 and 2008. Justice Jurado sufficiently showed that this item in his SALN referred to TD-00-CA-0003-

[61] *Navarro v. Ombudsman*, *supra* note 22.

07277[62] and TD-00-CA-0003-07278,[63] in the OCA report, which was covered by TCT No. 605198, registered under the name of his sister-in-law, Eva M. Godoy *(Godoy)*. On January 18, 2006, TCT No. 605198 was cancelled and a new one, TCT 699672,[64] was issued in his name. As properly explained, Justice Jurado bought the property from Godoy by giving the latter ₱100,000.00 and by paying off the mortgage on the said property. As shown in the Official Receipt,[65] the mortgaged on the property was paid by Justice Jurado on May 13, 1999. The property, however, was only transferred in his name in 2006 because it was only then that Godoy came back to the Philippines.

The Property in Mandaluyong City

A scrutiny of Justice Jurado's SALNs would readily show that he unfailingly declared a property situated in Mandaluyong City. In his SALNs, the property was declared as "Townhouse," which was obtained through loan and paid on installment basis. Justice Jurado submitted a copy of the land title of this property bearing TCT No. 2225,[66] issued on May 11, 1989, and TD-No. D-023-00495,[67] the tax declaration that covered the improvements thereon. Justice Jurado pointed out that TCT No. 2225 had been cancelled by virtue of a sale in favor of spouses Tristan and Michelle Saraza on August 23, 2013.

The Property in Pasig City

The property covered by TCT No. PT-135396,[68] situated in Pasig City with an area of 211 sq. m., was properly declared

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[62] Annex "P" of the OCA Report, *id.* at 59; Annex "26" of the Comment, *id.* at 339.

[63] Annex "Q" of the OCA Report, *id.* at 60; Annex "27" of the Comment, *id.* at 340.

[64] *Rollo*, pp. 345-346.

[65] Annex "30"of the Comment, *id.* at 354.

[66] Annex "32" of the Comment, *id.* at 357-361.

[67] Annex "33" of the Comment, *id.* at 362.

[68] Annex "36" of the Comment, *id.* at 371-375.

in the 2007[69] and 2008 SALNs. Justice Jurado included this property because it was only purchased on June 20, 2007 thru a bank loan while the building was constructed through a Pag-IBIG loan. Justice Jurado submitted a copy of the Deed of Absolute Sale[70] and Promissory Notes[71] from PS Bank, to show the transaction/history on the property.

The SALN of Atty. Buencamino

Atty. Buencamino candidly admitted the ownership of the real properties listed by the OCA. These properties were declared in all her SALNs from 1992-2008. Though the properties were not listed in detail, the same was not a violation of the rule as the old SALN form merely required a general statement of the assets, liabilities and net worth of the declarant.

Charge of Unexplained Wealth

As to the charge of unexplained wealth, there is *no prima facie* showing that either Justice Jurado or Atty. Buencamino has unlawfully accumulated wealth. Both had sufficiently explained how they got into the business of real estate which was fully supported by the evidence on record. They submitted copies of the several special powers of attorney,[72] executed by members of the Buencamino family, authorizing either Justice Jurado or Atty. Buencamino to subdivide and sell their properties; Business Permits[73] in various years to operate the real estate business; and Deeds of Mortgages,[74] executed by the buyers of the real estate property.

Atty. Buencamino calls the attention of the Court regarding a similar complaint that was previously filed before the

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[69] Annex "37" of the Comment, *id*. at 376.

[70] Annex "38" of the Comment, *id*. at 378-379.

[71] Annexes "39" and "40", *id*. at 382-383.

[72] Annex "B", *id*. at 435; Annex "D", *id*. at 437, Annex "E", *id*. at 438, Annex "F", *id*. at 439.

[73] *Id*. at 521-528.

[74] Annex "O", *id*. at 454-457; Annex "P", *id*. at 458-459, Annex "Q", *id*. at 460-462.

Ombudsman entitled "Juan Dela Cruz v. Atty. Monalisa A. Buencamino," for unexplained wealth. This complaint was endorsed to the OCA.[75] The complaint was, in turn, referred to the NBI by then Court Administrator (now SC Justice) Presbitero J. Velasco, Jr. for a discreet investigation. In its Report,[76] dated March 22, 2002, the NBI informed the Court that the earnings of Atty. Buencamino as a real estate investor greatly augmented her income as Clerk of Court and that the residential land and apartments owned by Atty. Buencamino were acquired through legitimate entrepreneurship. The properties covered by the NBI investigation were the same properties subjects of this case.

Charge of Immorality

For the same reason, the charge of immorality should likewise be dismissed. There is no evidence on record that would show that Justice Jurado and Atty. Buencamino had an immoral relationship. Other than their co-ownership of the property covered by TCT No. T-23271, no other evidence was presented to show any immoral conduct. Moreover, their co-ownership of the said property was sufficiently explained.

Lastly, Atty. Buencamino called the attention of the Court on the tax declaration marked as Annex "JJ" which she claimed to have been altered. The Court compared the two tax declarations, Annex "JJ"[77] submitted by the investigating team and Annex "2"[78] attached to Atty. Buencamino's comment, and noticed marked differences. Though the two documents bore the same number [E-011-09204] and location of the property [L-9-A-Unit D Buencamino Compound], the Court noticed, among others, that one document, marked as Annex "JJ" stated that the improvement was "LOCATED IN THE LAND OF JURADO, ROLAND B. & BUENCAMINO, MONALISA UNDER TDN/ARP NO. E-011-04887" while Annex "2" stated "LOCATED IN THE LAND OF THE SAME NAME UNDER TDN/ARP NO. E-011-06718."

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[75] Evaluation Report, dated August 6, 2001, *id*. at 515-518.

[76] *Id*. at 637-641.

[77] *Id*. at 110.

[78] *Id*. at 412.

As there was a claim of alteration, the investigating team should look into this. It should examine the official records and find out which one was the real tax declaration and the fake one, and how it came into the possession of the OCA. In the meantime, the Court defers the disposition of the complaint against Atty. Buencamino until after the report of the investigating team regarding the alleged alteration is submitted.

WHEREFORE, the complaint for immorality against Roland B. Jurado, Associate Justice of the Sandiganbayan and Atty. Monalisa A. Buencamino, Clerk of Court IV, Metropolitan Trial Court, Office of the Clerk of Court, Caloocan City, is **DISMISSED** for lack of factual basis.

The complaint against Justice Roland B. Jurado for unexplained wealth is **DISMISSED**.

The OCA investigating team, composed of Alwin M. Tumalad, George B. Molo, Jose Antonio A. Soriano, Leah Easter P. Laja, Lesalie M. Ramos, Miguel L. Mergal and Rex Allen R. Gregorio, all lawyers from the Legal Office and Lamberto Gamboa, Court Chauffeur, is directed to investigate the alleged alteration of Tax Declaration No. E-011-09204 and submit a report to the Court within Ten *(10)* days from receipt hereof.

The resolution on the complaint against Atty. Monalisa A. Buencamino for unexplained wealth is hereby **DEFERRED** until receipt by the Court of the OCA report on the alleged alteration of Tax Declaration No. E-011-09204.

SO ORDERED.

Sereno, C.J., Carpio, Leonardo-de Castro, Peralta, Bersamin, del Castillo, Reyes, Leonen, Jardeleza, Caguioa, Martires, and *Tijam, JJ.,* concur.

Velasco, Jr., J., no part.

Perlas-Bernabe, J., on official leave.

EN BANC

[A.M. No. MTJ-17-1894. April 4, 2017]
(Formerly OCA I.P.I. No. 11-2355-MTJ)

ROGER RAPSING, *complainant, vs.* **JUDGE CARIDAD M. WALSE-LUTERO, Metropolitan Trial Court, Br. 34, Quezon City [now Presiding Judge, Regional Trial Court, Br. 223, Quezon City] and CELESTINA D. ROTA, Clerk of Court III, Metropolitan Trial Court, Br. 34, Quezon City,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; DISCIPLINE OF JUDGES; JUDGES ARE EXPECTED TO CLOSELY FOLLOW THE DEVELOPMENT OF CASES AND IN THIS RESPECT TO KEEP THEIR OWN RECORD OF CASES SO THAT THEY MAY ACT ON THEM PROMPTLY.—** While the Branch Clerk of Court was remiss in not calling respondent's attention to the pending incident in Civil Case No. 06-35758, this does not completely exculpate respondent from liability. As the presiding judge, it was respondent's responsibility to know which cases or motions were submitted for decision or resolution. Judges are expected to closely follow the development of cases and in this respect, "to keep [their] own record of cases so that [they] may act on them promptly." In *RE: Report on the Judicial Audit Conducted at the Metropolitan Trial Court, Branch 55, Malabon City,* this Court held that "[j]udges and branch clerks of court should conduct personally a physical inventory of the pending cases in their courts and examine personally the records of each case [not only] at the time of their assumption to office, [but] every semester thereafter on 30 June and 31 December." "[T]he regular and continuing physical inventory of cases enable[s] the judge to keep abreast of the status of the pending cases and to be informed that everything in the court is in proper order." Responsibility rests primarily on the judge and he or she "cannot take refuge behind the inefficiency or mismanagement of his personnel." x x x Had respondent Judge Walse-Lutero physically inventoried her cases on a semestral

basis as prescribed, she could have discovered the unresolved pending incidents earlier, instead of two (2) years later. The resolution of two (2) fairly simple motions dragged on for more than two (2) years – thereby prolonging the resolution of the ejectment case – because of respondent's lapse. In *Atty. de Jesus v. Judge Mendoza-Parker*, the Court ruled that "[d]elay in the disposition of even one case [would] constitute gross inefficiency which this Court [would] not tolerate."

2. **ID.; ID.; WHILE DOMESTIC CONCERNS DESERVE SOME CONSIDERATION FROM THE SUPREME COURT, SUCH CIRCUMSTANCES COULD ONLY MITIGATE THE LIABILITY OF THE RESPONDENT JUDGE; CASE AT BAR.—** Respondent explained that she had worked hard to considerably reduce the caseload of her sala and had endeavored to personally monitor all the cases in her court. However, in 2009, she was usually on leave to look after her Stage 2A colon cancer-diagnosed husband. This situation forced her to rely on her legal researcher and on Rota to update her on urgent matters. Later on, she also had to care for her son who was diagnosed with Stage 2 Hodgkin's lymphoma in November 2010. While respondent's domestic concerns deserve some consideration from this Court, such circumstances could only mitigate her liability. Judges have the duty to administer justice without delay. Judge Walse-Lutero should bear in mind that those charged with the task of dispensing justice carry a heavy burden of responsibility. As a frontline official of the Judiciary, a trial judge should at all times maintain professional competence and observe the high standards of public service and fidelity. Her dedication to duty is the least she could do to sustain the public's trust and confidence not only in her but more importantly in the institution she represents.

3. **ID.; ID.; UNDUE DELAY IN RENDERING DECISION OR ORDER; IMPOSABLE PENALTY.—** Under Section 9 of Rule 140 of the Revised Rules of Court, "undue delay in rendering a decision or order, or in transmitting the records of a case" is a less serious charge. Section 11 of the same Rule provides for the applicable penalty, x xx In *Pichon v. Judge Rallos*, the respondent was reprimanded "for his failure to seasonably decide" the criminal cases for estafa. This Court took into account that respondent had "no record of previous administrative sanctions." Here, considering the reasons for the delay in the

resolution of the motions, the absence of bad faith or malice on the part of respondent, and lack of any record of previous administrative sanctions against her, we consider it proper to admonish respondent Judge Walse-Lutero for her failure to act promptly on the complainant's motions.

4. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERK OF COURT; WHEN GUILTY OF GROSS NEGLECT OF DUTY; RESPONDENT'S INCOMPETENCE AND REPEATED INFRACTIONS EXHIBITED HER UNFITNESS AND PLAIN INABILITY TO DISCHARGE THE DUTIES OF A BRANCH CLERK OF COURT, WHICH JUSTIFIES HER DISMISSAL FROM SERVICE.—Simple neglect of duty is defined as the failure of an employee to give one's attention to a task expected of him or her. Gross neglect of duty is such neglect which, "from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare." x x x Rota's neglect in this case is gross, bordering on utter carelessness or indifference, to the prejudice of the public she was duty-bound to serve. Her inattentiveness and lack of any effort to even look for the case records, despite several follow-ups from the complainant, caused unnecessary and undue delay in the progress of the ejectment case. This is not the first offense of Rota. As reported by the Office of the Court Administrator, at least two (2) administrative cases have been decided against her. x x x Clerks of Court are at the forefront of judicial administration because of their indispensable role in case adjudication and court management. They are the models for the court employees "to act speedily and with dispatch on their assigned task[s] to avoid the clogging of cases in court and thereby assist in the administration of justice without undue delay." Moreover, as public officers, they should discharge their tasks with utmost responsibility, integrity, loyalty, and efficiency guided by the principle that "public office is a public trust." The frequency by which Rota neglected her duties and her lack of remorse reveal that there is no more justification for her to stay longer in her position. Rota clearly failed to meet the requirements expected of her as a Branch Clerk of Court.

RESOLUTION

LEONEN, *J.*:

In the February 22, 2011 Amended Affidavit-Complaint,[1] Roger Rapsing (Rapsing) accused Presiding Judge Caridad M. Walse-Lutero (Judge Walse-Lutero) of Branch 34, Metropolitan Trial Court, Quezon City of undue delay in resolving two (2) motions filed by his counsel in Civil Case No. 06-35758, entitled *Roger Rapsing v. Spouses Eddie and Luzviminda Rapsing*, for Ejectment.

The motions were: (1) Manifestation with Motion to Withdraw Admission dated August 15, 2008 and filed on August 20, 2008;[2] and (2) Motion to Inhibit dated July 24, 2008 and filed on July 25, 2008.[3]

The Manifestation with Motion to Withdraw Admission arose from the January 17, 2008 Order of respondent Judge Walse-Lutero denying complainant's motion to correct the pre-trial order.[4] Complainant moved for reconsideration but this was denied by the respondent judge in an Order dated July 4, 2008, prompting complainant to file a Motion to Inhibit on July 25, 2008.[5]

During the hearing of the Motion to Inhibit on August 15, 2008, the matter of the denial of the motion to correct the pre-trial order was also discussed.[6] Respondent Judge Walse-Lutero informed complainant's counsel that the proper remedy to remove the supposed admission of his client as contained in the pre-trial order was to file a withdrawal of admission and not correction of the pre-trial order.[7] Consequently, it was agreed upon that

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[1] *Rollo,* pp. 2-4.

[2] *Id*. at 3.

[3] *Id*.

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

[5] *Id*. at 3.

[6] *Id*. at 51.

[7] *Id*.

the resolution of the motion to inhibit shall be held in abeyance pending the filing of the proper motion.[8] The Motion to Withdraw Admission was subsequently filed on August 20, 2008,[9] and was deemed submitted for resolution in the Order dated September 12, 2008.[10] Considering that the motion had remained unresolved for a considerable length of time, complainant argued that respondent Judge Walse-Lutero should be held liable for undue delay.[11]

Rapsing's Affidavit-Complaint was docketed as OCA I.P.I. No. 11-2355-MTJ. In First Indorsement[12] dated April 8, 2011, Court Administrator Jose Midas P. Marquez referred the complaint to Judge Walse-Lutero for comment.

On April 18, 2012, the Office of the Court Administrator received respondent Judge Walse-Lutero's Comment.[13]

Judge Walse-Lutero denied delaying the resolution of the motions.[14] She explained that the Branch Clerk of Court failed to return the record of the case to her for the resolution of the motions.[15] Respondent averred that she discovered the unresolved motions only in March 2011, when her staff, upon coming from the Supreme Court, informed her of the present administrative complaint.[16]

Respondent added that Ms. Shernalyn Mallari-Carian (Carian), the Docket Clerk-in-Charge, reasoned her being new in her

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[8] *Id*.

[9] *Id*. at 3.

[10] *Id*. at 45.

[11] *Id*. at 2.

[12] *Id*. at 48. The First Indorsement mistakenly state that Judge Caridad Walse-Lutero was of Branch 24 instead of Branch 34, Metropolitan Trial Court, Quezon City.

[13] *Id*. at 50-A-55.

[14] *Id*. at 52.

[15] *Id*. at 51.

[16] *Id*. at 51-52.

post when queried for failure to refer the record of Civil Case No. 06-35758 to respondent Judge Walse-Lutero.[17] Carian averred that the former Clerk-in-Charge turned over all the records of the civil cases to the Branch Clerk of Court Ms. Celestina Rota (Rota).[18] Carian pointed out that complainant had been following up the case with Rota.[19] For her part, Rota admitted that "even with the intermittent follow-up of the herein parties in this case, [she] failed to refer the case to [respondent Judge Walse-Lutero] for resolution of the pending incident due to the volume of civil cases also for decision."[20]

Judge Walse-Lutero further affirmed that "[u]pon receipt of the record, [she] discovered that it was badly damaged by rain water that leaked through [the court's] ceiling."[21] When she asked Rota why the latter did not inform her about the damage or ask the parties to replace the drenched documents, Rota merely shrugged and said, "*[K]aya nga judge*."[22] Nonetheless, Judge Walse-Lutero alleged that after the record was reconstituted, she promptly resolved all pending incidents and rendered her decision in the subject case.[23]

Respondent Judge Walse-Lutero revealed that with the 3,800 cases she inherited from the previous presiding judges, as well as the 80 to 130 cases that were raffled to her branch on a monthly basis, "it [was] impossible for [her] to monitor each and every case before [the] court."[24] Therefore, she "had to rely on [Rota] to inform [her] of cases that require[d] prompt

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[17] *Id*. at 52.

[18] *Id*.

[19] *Id*.

[20] *Id*.

[21] *Id*.

[22] *Id*.

[23] *Id*.

[24] *Id*.

action."[25] Unfortunately, Rota had been greatly remiss in the performance of her duties. For instance, when respondent Judge Walse-Lutero took over, she discovered that almost 200 cases with pending motions or submitted for decision were bundled with archived ones.[26] Respondent Judge Walse-Lutero consistently gave "unsatisfactory" ratings to Rota and once raised the issue of her incompetence before then Court Administrator Jose P. Perez.[27] Respondent Judge Walse-Lutero was advised by the Office of the Administrative Services of the Office of the Court Administrator to direct Rota "to explain why she should not be dropped from the service."[28] Respondent Judge Walse-Lutero did as instructed and Rota had the audacity to reply: "*Ibalato mo na sa akin itong rating judge*."[29] Respondent Judge Walse-Lutero has since submitted several memoranda to the Office of the Court Administrator requesting to drop Rota from the rolls.[30]

Lastly, respondent Judge Walse-Lutero had to attend to her cancer-stricken husband and son from 2009 to 2011.[31] Despite this domestic concern, she claimed that she made every effort to bring down the court's caseload, which included virtually taking over Rota's workload.[32] The court's caseload when she first took over was 3,800 cases, which she lowered to 2,800 cases in her first year.[33] The court's caseload is now between 1,900 to 2,100 cases, depending on the number of cases raffled to the court every month.[34]

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[25] *Id*.

[26] *Id*. at 54.

[27] *Id*. at 53.

[28] *Id*.

[29] *Id*.

[30] *Id*.

[31] *Id*. at 54.

[32] *Id*.

[33] *Id*.

[34] *Id*.

Considering Judge Walse-Lutero's explanation, particularly her averments regarding Rota's neglect, this Court resolved to furnish Rota with copies of the Affidavit-Complaint and of the Comment of Judge Walse-Lutero dated April 16, 2012.[35] This Court equally decided to require her to explain "why she should not be administratively held liable for gross neglect of duty."[36]

On February 29, 2016, the Office of the Court Administrator received Rota's comment.[37]

Rota attributed her "neglect/omission/lapse" to the high caseload of the court, particularly in criminal cases.[38] She added that the number of court personnel in her branch was not proportionate to the court's caseload.[39] This problem was allegedly aggravated by leaves of absence by court personnel due to personal sickness, sickness or death in the family, maternity leave, retirement, and "recall of the assisting/detailed clerk by the mother unit [Office of the Clerk of Court.]"[40]

Rota also explained that the case record got wet during the Typhoon Ondoy through a leak in the roof.[41] She allegedly apologized for it, and rectified the damage by working on Saturdays.[42]

Finally, on the high volume of cases, Rota explained that while both civil and criminal cases were equally important, the court gave priority to criminal cases especially those involving detention prisoners.[43]

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[35] *Id*. at 84.

[36] *Id*.

[37] *Id*. at 90-91.

[38] *Id*. at 90.

[39] *Id*.

[40] *Id*.

[41] *Id*.

[42] *Id*.

[43] *Id*. at 90-91.

The Office of the Court Administrator, in its Memorandum[44] dated August 5, 2016, recommended the dismissal of the case against Judge Walse-Lutero, with a reminder for her "to be more meticulous and zealous in organizing and supervising the work of her subordinates."[45]

Regarding Rota, the Office of the Court Administrator recommended that Rapsing's complaint be docketed as a separate administrative matter against her for gross neglect of duty.[46] The Office of the Court Administrator found Rota negligent in her handling of the record of Civil Case No. 06-35758.[47] It also took into account the previous instances wherein Rota was sanctioned[48] for negligence in the performance of her duties, and Rota's indifference in complying with the Court's directives for her to file a comment.[49] However, considering Rota's 20 years in government service, the Office of the Court Administrator recommended her suspension for six (6) months instead of dismissal from service.[50]

We find Judge Walse-Lutero liable for neglecting her duty to resolve motions expeditiously. On the other hand, we agree with the findings of the Office of the Court Administrator that Rota is guilty of gross neglect of duty.

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[44] *Id*. at 95-101.

[45] *Id*. at 101.

[46] *Id*.

[47] *Id*. at 99.

[48] 1) *Re: Report of Judge Maria Elisa Sempio Diy, Metropolitan Trial Court, Branch 34, Quezon City, about the Loss of Certain Valuables and Items within the Court Premises*, 567 Phil. 183(2008) [Per *J*. Quisumbing, Second Division]. Rota was suspended for three (3) months for simple neglect of duty; and

2) *Arevalo v. Loria,* 450 Phil. 48 (2003) [Per *J*. Vitug, First Division]. Rota was fined in the amount of ₱1,000.00 or negligence in not issuing summons.

[49] *Rollo,* pp. 99-100.

[50] *Id*. at 100.

I

There was clearly an undue delay in resolving the two (2) motions. Judge Walse-Lutero, however, attributes the delay to the failure of the Branch Clerk of Court to refer to her the records of the ejectment case for resolution.

The Office of the Court Administrator found Judge Walse-Lutero's explanation sufficient to clear her from any administrative liability. We disagree.

While the Branch Clerk of Court was remiss in not calling respondent's attention to the pending incident in Civil Case No. 06-35758, this does not completely exculpate respondent from liability. As the presiding judge, it was respondent's responsibility to know which cases or motions were submitted for decision or resolution.[51] Judges are expected to closely follow the development of cases and in this respect, "to keep [their] own record of cases so that [they] may act on them promptly."[52]

In *RE: Report on the Judicial Audit Conducted at the Metropolitan Trial Court, Branch 55, Malabon City,*[53] this Court held that "[j]udges and branch clerks of court should conduct personally a physical inventory of the pending cases in their courts and examine personally the records of each case [not only] at the time of their assumption to office, [but] every semester thereafter on 30 June and 31 December."[54] "[T]he regular and continuing physical inventory of cases enable[s] the judge to keep abreast of the status of the pending cases and to be informed that everything in the court is in proper order."[55]

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[51] *Cueva v. Villanueva,* 365 Phil. 1, 9 (1999) [*Per Curiam*, *En Banc*].

[52] *Unitrust Development Bank v. Caoibes, Jr.,* 456 Phil. 676, 682 (2003) [Per *J*. Quisumbing, *En Banc*].

[53] 612 Phil. 8 (2009) [Per *J*. Quisumbing, Second Division].

[54] *Id*. at 9.

[55] *In Re: Report on the Judicial Audit Conducted in the Regional Trial Court, Branch 45, Urdaneta City, Pangasinan, and Report on the Incident at Branch 49, Same Court,* 654 Phil. 240, 254 (2011) [Per *J*. Bersamin, Third Division].

Responsibility rests primarily on the judge and he or she "cannot take refuge behind the inefficiency or mismanagement of his personnel."[56]

In this case, the motions were submitted for resolution on September 12, 2008.[57] On March 17, 2010, Rapsing even filed a Manifestation and Motion informing the court about the two (2) pending motions, and praying for their resolution.[58] Had Judge Walse-Lutero been more circumspect in discharging her judicial duties, she would have discovered the pending incidents in the ejectment case. Instead, she found out about the unresolved motions only in March 2011 when she was apprised by the Office of the Court Administrator of the present administrative complaint.[59]

Respondent explained that she had worked hard to considerably reduce the caseload of her sala[60] and had endeavored to personally monitor all the cases in her court.[61] However, in 2009, she was usually on leave to look after her Stage 2A colon cancer-diagnosed husband.[62] This situation forced her to rely on her legal researcher and on Rota to update her on urgent matters.[63] Later on, she also had to care for her son who was diagnosed with Stage 2 Hodgkin's lymphoma in November 2010.[64]

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[56] *Office of the Court Administrator v. Judge Doyon,* 592 Phil. 235, 247 (2008) [Per *J.* Austria-Martinez, Third Division]; *Manzon v. Perello,* 472 Phil. 384, 389 (2004) [Per *J.* Vitug, Third Division]; *Visbal v. Judge Buban*, 443 Phil. 705, 709 (2003) [Per *J.* Sandoval-Gutierrez, Third Division]; *V.C. Ponce Co., Inc. v. Eduarte,* 397 Phil. 498, 517 (2000) [Per Ynares-Santiago, First Division]*; Cueva v. Villanueva,* 365 Phil. 1, 9 (1999) [*Per Curiam, En Banc*].

[57] *Rollo,* p. 45.

[58] *Id*. at 3 and 46-47.

[59] *Id*. at 52.

[60] *Id*. at 54.

[61] *Id*. at 53.

[62] *Id*. at 54.

[63] *Id*.

[64] *Id*.

While respondent's domestic concerns deserve some consideration from this Court, such circumstances could only mitigate her liability. Judges have the duty to administer justice without delay. Judge Walse-Lutero should bear in mind that those charged with the task of dispensing justice carry a heavy burden of responsibility.[65] As a frontline official of the Judiciary, a trial judge should at all times maintain professional competence and observe the high standards of public service and fidelity. Her dedication to duty is the least she could do to sustain the public's trust and confidence not only in her but more importantly in the institution she represents.[66]

Had respondent Judge Walse-Lutero physically inventoried her cases on a semestral basis as prescribed, she could have discovered the unresolved pending incidents earlier, instead of two (2) years later. The resolution of two (2) fairly simple motions dragged on for more than two (2) years – thereby prolonging the resolution of the ejectment case – because of respondent's lapse.

In *Atty. de Jesus v. Judge Mendoza-Parker*,[67] the Court ruled that "[d]elay in the disposition of even one case [would] constitute gross inefficiency which this Court [would] not tolerate."[68]

Under Section 9 of Rule 140 of the Revised Rules of Court, "undue delay in rendering a decision or order, or in transmitting the records of a case" is a less serious charge. Section 11 of the same Rule provides for the applicable penalty, to wit:

SECTION 11. *Sanctions*. —

. . . . . .

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[65] *Office of the Court Administrator v. Acampado*, 721 Phil. 12, 31-32 (2013) [*Per Curiam, En Banc*].

[66] *Re: Failure of Former Judge Antonio A. Carbonell to Decide Cases Submitted for Decision and to Resolve Pending Motions in the Regional Trial Court, Branch 27, San Fernando, La Union,* 713 Phil. 594, 597-598 (2013) [Per *J*. Bersamin, *En Banc*].

[67] 387 Phil. 644 (2000) [Per *J*. Quisumbing, *En Banc*].

[68] *Id*. at 656.

B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or

2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

In *Pichon v. Judge Rallos*,[69] the respondent was reprimanded "for his failure to seasonably decide" the criminal cases for estafa.[70] This Court took into account that respondent had "no record of previous administrative sanctions."[71]

Here, considering the reasons for the delay in the resolution of the motions, the absence of bad faith or malice on the part of respondent, and lack of any record of previous administrative sanctions against her, we consider it proper to admonish respondent Judge Walse-Lutero for her failure to act promptly on the complainant's motions.

II

As regards Rota, we agree with the Office of the Court Administrator that she is liable for gross neglect of duty. By Rota's own admission, she failed to refer the case to Judge Walse-Lutero for resolution of the pending incidents "*even with the intermittent follow-ups of the . . . parties*."[72] She likewise failed to report to Judge Walse-Lutero the damage in the records, thus, preventing the reconstitution of the records at the earliest time possible.[73] As the administrative assistant of the presiding judge, it was Rota's duty to diligently supervise and manage court dockets and records, and to ensure that the records were complete and intact. She played a key role in the complement of the court and could not be permitted to slacken in her job.

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[69] *Pichon v. Judge Rallos,* 444 Phil. 131 (2003) [Per *J.* Quisumbing, Second Division].

[70] *Id*. at 136.

[71] *Id*.

[72] *Rollo,* p. 52.

[73] *Id*.

This Court has held:

> Branch clerks of court must realize that their administrative functions are vital to the prompt and proper administration of justice. 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. On their shoulders, as much as those of judges, rest the responsibility of closely following development of cases, such that delay in the disposition of cases is kept to a minimum.[74] (Citations omitted)

Judge Walse-Lutero further pointed out that Rota had not improved despite being repeatedly called to task for her incompetence and negligence.[75] In fact, Judge Walse-Lutero added that while Rota held the position of branch clerk of court, her functions were delegated to other court personnel because of her poor performance.[76] "More often than not, she [could] be seen either reading a novel, eating, or staring at the ceiling."[77]

Despite these serious charges of incompetence and unsatisfactory performance against her, the only explanation that Rota could offer was the high volume of caseload in the court.[78] The volume of work, however, cannot be an excuse for her being remiss in the performance of her functions.[79]

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[74] *Re: Report on the Judicial Audit Conducted at the Metropolitan Trial Court, Branch 55, Malabon City,* 612 Phil. 8, 34 (2009) [Per *J.* Quisumbing, Second Division].

[75] *Rollo*, p. 53.

[76] *Id*. at 54.

[77] *Id*. at 53.

[78] *Id*. at 90.

[79] *Marquez v. Pablico,* 579 Phil. 25, 31 (2008) [Per *J.* Carpio Morales, Second Division].

By her assumption of the position of clerk of court, it is understood that she was ready and competent to do her job with utmost devotion and efficiency.[80] Rota's apathy towards her duties and responsibilities as Branch Clerk of Court is inimical to the prompt and proper administration of justice.

Simple neglect of duty is defined as the failure of an employee to give one's attention to a task expected of him or her.[81] Gross neglect of duty is such neglect which, "from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare."[82] In *GSIS v. Manalo*:[83]

> Gross neglect of duty or gross negligence 'refers to negligence characterized by the want of even slight care, or by 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 the consequences, insofar as other persons may be affected. It is the *omission of that care that even inattentive and thoughtless men never fail to give to their own property*.' It denotes a *flagrant and culpable refusal or unwillingness of a person to perform a duty*. In cases involving public officials, gross negligence occurs when a *breach of duty is flagrant and palpable*.[84] (Emphasis in the original, citation omitted)

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[80] *Office of the Court Administrator v. Cinco,* 610 Phil. 40, 48 (2009) [Per J. Carpio Morales, Second Division].

[81] *Reyes v. Pablico*, 538 Phil. 10, 20 (2006) [Per J. Carpio, Third Division].

[82] *Alleged loss of various boxes of copy paper during their transfer from the Property Division, Office of Administrative Services (OAS), to the various rooms of the Philippine Judicial Academy,* 744 Phil. 526, 537-538 (2014) [Per J. Bersamin, *En Banc*].

[83] G.R. No. 208979, September 21, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/september2016/208979.pdf> [Per J. Del Castillo, Second Division].

[84] *Id.* at 19.

Rota's neglect in this case is gross, bordering on utter carelessness or indifference, to the prejudice of the public she was duty-bound to serve. Her inattentiveness and lack of any effort to even look for the case records, despite several follow-ups from the complainant, caused unnecessary and undue delay in the progress of the ejectment case.

The Office of the Court Administrator recommended a penalty of suspension of six (6) months in view of Rota's 20 years in government service.[85] We disagree with the penalty.

This is not the first offense of Rota. As reported by the Office of the Court Administrator, at least two (2) administrative cases have been decided against her.[86] In *Arevalo v. Loria*,[87] this Court found Rota to be negligent in the performance of her duties when she issued a writ of demolition that was not strictly in accordance with the tenor of the judgment issued in an ejectment case.[88] Rota was fined ₱1,000.00 for her neglect.[89]

In *Re: Report of Judge Sempio Diy,*[90] this Court found Rota negligent in safekeeping an Armscor gun, which was "an object evidence in a pending criminal case."[91] This Court noted that it was Rota's second offense, and the prescribed penalty was dismissal from service.[92] However, for humanitarian considerations and because of the subsequent discovery of the missing gun, this Court resolved to impose

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[85] *Rollo,* p. 100.

[86] *Id*. at 99.

[87] 450 Phil. 48 (2003) [Per *J*. Vitug, First Division].

[88] *Id*. at 58-59.

[89] *Id*.

[90] 567 Phil. 183 (2008) [Per *J*. Quisumbing, Second Division].

[91] *Id*. at 184-185.

[92] *Id*. at 187-188.

upon her the penalty of suspension for three (3) months instead of dismissal from service.[93] Rota was further reminded that:

> [A]s ranking officers of our judicial system who perform delicate administrative functions vital to the prompt and proper administration of justice, they should perform their duties with diligence and competence in order to uphold the good name and integrity of the judiciary, and to serve as role models for their subordinates.[94]

Rota had been given enough time to improve and reform. Despite these opportunities, and this Court's previous sanctions and repeated warnings that similar acts would be severely dealt with, Rota had not improved in her performance as Branch Clerk of Court. The previous warnings from this Court did not effectively rouse Rota to be more mindful of her duties. Judge Walse-Lutero had clearly expressed her dissatisfaction with Rota's performance and gave her unsatisfactory performance evaluation ratings. Rota was asked twice to explain why she should not be dropped from the service for her incompetence and negligence.[95] Judge Walse-Lutero had even elevated the issue of Rota's incompetence before the Office of the Court Administrator many times. Rota had not given any satisfactory explanation.

Clerks of Court are at the forefront of judicial administration because of their indispensable role in case adjudication and court management. They are the models for the court employees "to act speedily and with dispatch on their assigned task[s] to avoid the clogging of cases in court and thereby assist in the administration of justice without undue delay."[96] Moreover, as public officers, they should discharge their tasks

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[93] *Id*. at 188.

[94] *Id*.

[95] *Rollo*, p. 53.

[96] *Paa v. Remigio*, 177 Phil. 550, 556 (1979) [Per *J*. Guerrero, First Division].

with utmost responsibility, integrity, loyalty, and efficiency guided by the principle that "public office is a public trust."[97]

The frequency by which Rota neglected her duties and her lack of remorse reveal that there is no more justification for her to stay longer in her position. Rota clearly failed to meet the requirements expected of her as a Branch Clerk of Court. Her apathy evinces an utter lack of concern for her role as a "sentinel of justice." Her repeated infractions "seriously compromise[d] efficiency and hamper[ed] public service."[98]

Rota was not even diligent in complying with the orders of this Court. The Resolution dated November 18, 2013 directing her to file a comment was received by Rota on December 23, 2013.[99] However, as of August 13, 2015, the Office of the Court Administrator reported that Rota had not yet complied and had not made any serious effort to comply.[100] It was only after this Court issued the Resolution[101] dated December 9, 2015, and under pain of contempt, did Rota comply with the directive to file her comment.

Considering Rota's gross dereliction of duty and her violation of the Code of Conduct for Court Personnel,[102] the corresponding penalty of dismissal from service[103] must be

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[97] CONST. (1987), Art. XI, Sec. 1.

[98] *Office of the Court Administrator v. Hon. Tormis,* 706 Phil. 113, 137 (2013) [*Per Curiam, En Banc*].

[99] *Rollo,* p. 86.

[100] *Id*. at 86-87.

[101] *Id*. at 88-89.

[102] CODE OF CONDUCT FOR COURT PERSONNEL, Canon 4, Sec. 1, requires that "[c]ourt personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours."

[103] 2011 REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, Rule 10, Sec. 46(A)(2) provides that gross neglect of duty is a grave offense punishable by dismissal from service.

meted out to her. The objective of imposing the correct disciplinary measure is not so much to punish the erring officer or employee but primarily to improve public service and preserve the public's faith and confidence in the government.[104] Respondent's incompetence and repeated infractions exhibited her unfitness and plain inability to discharge the duties of a Branch Clerk of Court, which justifies her dismissal from service.

WHEREFORE, this Court resolves to re-docket the present administrative case as a regular administrative matter against Presiding Judge Caridad M. Walse-Lutero and Branch Clerk of Court Celestina D. Rota.

Presiding Judge Caridad M. Walse-Lutero is **ADMONISHED** for her undue delay in resolving the motions in Civil Case No. 06-35758.

Branch Clerk of Court Celestina D. Rota is found **GUILTY** of gross neglect of duty and is hereby **DISMISSED** from service. All her benefits, except accrued leave credits, if any, are declared FORFEITED, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations and financial institutions.

SO ORDERED.

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

Perlas-Bernabe, J., on official leave.

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[104] *Ganzon v. Arlos,* 720 Phil. 104, 119 (2013) [Per *J.* Bersamin, *En Banc*]; *Buenaventura v. Mabalot,* 716 Phil. 476, 499 (2013) [Per *J.* Mendoza, Third Division].

THIRD DIVISION

[G.R. No. 186603. April 5, 2017]

REPUBLIC OF THE PHILIPPINES, represented by the REGIONAL EXECUTIVE DIRECTOR, DENR, REGION VI, ILOILO CITY, *petitioner, vs.* **VALENTINA ESPINOSA, REGISTER OF DEEDS OF THE PROVINCE OF NEGROS OCCIDENTAL, LEONILA CALISTON, and SPOUSES DIOSCORO & ESTRELLA ESCARDA,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY; LAND REGISTRATION; THE APPLICANT HAS THE BURDEN OF OVERCOMING THE PRESUMPTION OF STATE OWNERSHIP IN LAND REGISTRATION PROCEEDINGS; CASE AT BAR.— In land registration proceedings, the applicant has the burden of overcoming the presumption of State ownership. It must establish, through incontrovertible evidence, that the land sought to be registered is alienable or disposable based on a positive act of the government. Since cadastral proceedings are governed by the usual rules of practice, procedure, and evidence, a cadastral decree and a certificate of title are issued only after the applicant proves all the requisite jurisdictional facts—that they are entitled to the claimed lot, that all parties are heard, and that evidence is considered. As such, the cadastral decree is a judgment which adjudicates ownership after proving these jurisdictional facts. Here, it is undisputed that Espinosa was granted a cadastral decree and was subsequently issued OCT No. 191-N, the predecessor title of Caliston's TCT No. 91117. Having been granted a decree in a cadastral proceeding, Espinosa can be presumed to have overcome the presumption that the land sought to be registered forms part of the public domain. This means that Espinosa, as the applicant, was able to prove by incontrovertible evidence that the property is alienable and disposable property in the cadastral proceedings.

2. POLITICAL LAW; THE PUBLIC LAND ACT (COMMONWEALTH NO. 141 OF 1936); ACTION FOR REVERSION; REVERSION, DEFINED; IN AN ACTION

FOR REVERSION, THE BURDEN IS ON THE STATE TO PROVE THAT THE PROPERTY WAS CLASSIFIED AS TIMBERLAND OR FOREST LAND AT THE TIME IT WAS DECREED TO RESPONDENT; CASE AT BAR.— Reversion is the remedy where the State, pursuant to the Regalian doctrine, seeks to revert land back to the mass of the public domain. It is proper when public land is fraudulently awarded and disposed of to private individuals or corporations. There are also instances when we granted reversion on grounds other than fraud, such as when a "person obtains a title under the Public Land Act which includes, by oversight, lands which cannot be registered under the Torrens system, or when the Director of Lands did not have jurisdiction over the same because it is of the public domain." In this case, the State, through the Solicitor General, alleges neither fraud nor misrepresentation in the cadastral proceedings and in the issuance of the title in Espinosa's favor. The argument for the State is merely that the property was unlawfully included in the certificate of title because it is of the public domain. Since the case is one for reversion and not one for land registration, the burden is on the State to prove that the property was classified as timberland or forest land *at the time it was decreed to Espinosa*. To reiterate, there is no burden on Caliston to prove that the property in question is alienable and disposable land. At this stage, it is reasonable to presume that Espinosa, from whom Caliston derived her title, had already established that the property is alienable and disposable land considering that she succeeded in obtaining the OCT over it. In this reversion proceeding, the State must prove that there was an oversight or mistake in the inclusion of the property in Espinosa's title because it was of public dominion. This is consistent with the rule that the burden of proof rests on the party who, as determined by the pleadings or the nature of the case, asserts the affirmative of an issue. x x x We stress that our ruling is not inconsistent with the doctrine that forest lands are outside the commerce of man and unsusceptible of private appropriation. Neither are we changing the rule on imprescriptibility of actions for reversion. We are merely deciding on the facts as proved by the record. To allow a reversion based on a classification made at the time when the property was already declared private property by virtue of a decree would be akin to expropriation of land without due process of law.

3. REMEDIAL LAW; EVIDENCE; DOCUMENTARY EVIDENCE; THE RULES REQUIRE THAT DOCUMENTARY EVIDENCE MUST BE FORMALLY OFFERED IN EVIDENCE AFTER THE PRESENTATION OF TESTIMONIAL EVIDENCE, IT MAY BE DONE ORALLY, OR IF ALLOWED BY THE COURT, IN WRITING; CASE AT BAR.— Here, the State hinges its whole claim on its lone piece of evidence, the land classification map prepared in 1986. The records show, however, that LC Map No. 2978 was not formally offered in evidence. The rules require that documentary evidence must be formally offered in evidence after the presentation of testimonial evidence, and it may be done orally, or if allowed by the court, in writing. Due process requires a formal offer of evidence for the benefit of the adverse party, the trial court, and the appellate courts. This gives the adverse party the opportunity to examine and oppose the admissibility of the evidence. When evidence has not been formally offered, it should not be considered by the court in arriving at its decision. Not having been offered formally, it was error for the trial court to have considered the survey map. Consequently, it also erred in ordering the reversion of the property to the mass of the public domain on the basis of the same. As part of fair play and due process, the State is as bound by the rules on formal offer of evidence as much as every private party is. More, the State's subsequent reclassification of the area where the property is situated cannot be used to defeat the rights of a private citizen who acquired the land in a valid and regular proceeding conducted 24 years earlier. x x x To grant the reversion based on a subsequent reclassification, more so on lack of evidence, would amount to taking of private property without just compensation and due process of law. This, however, is not what our Constitution envisions; fairness and due process are paramount considerations that must still be observed.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Alfredo A. Orquillas, Jr. for respondent L. Caliston.
Josephine Maria E. Natalaray for respondent Sps. Escarda.

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) July 25, 2008 Decision[2] and February 4, 2009 Resolution[3] in CA-G.R. CV No. 00421. The CA modified the May 12, 2004 Decision[4] of the Regional Trial Court (RTC), Branch 61 of Kabankalan City, Negros Occidental, and dismissed the reversion case filed by the Republic of the Philippines (State) against respondents Valentina Espinosa and her successor-in-interest, Leonila B. Caliston, to wit:

> **WHEREFORE**, the appeal is **GRANTED**. The Decision dated May 12, 2004 and Order dated July 16, 2004 are hereby **modified** upholding the validity of Original Certificate of Title No. 191-N and Transfer Certificate of Title No. 91117, respectively, issued in the names of Valentina Espinosa and Leonila Caliston. The award of damages, attorney's fees and expenses of litigation in favor of Leonila Caliston is **affirmed**.
>
> **SO ORDERED.**[5]

On October 26, 1955, Cadastral Decree No. N-31626 was issued to Valentina Espinosa (Espinosa) in Cadastral Case No. 39, L.R.C. Cadastral Record No. 980. It covered a 28,880-square meter lot located at Lot No. 3599 of Cadastral Record No. 980, Poblacion, Sipalay City, Negros Occidental (property). By virtue of the decree, Original Certificate of Title (OCT) No. 191-N was issued on October 15, 1962 in the name of Espinosa.[6] On

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[1] *Rollo*, pp. 9-24.

[2] *Id.* at 25-36; penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Priscilla Baltazar-Padilla and Franchito N. Diamante concurring.

[3] *Id.* at 37.

[4] RTC records, pp. 97-105.

[5] *Rollo*, p. 35.

[6] RTC records, p. 7.

June 17, 1976, Espinosa sold the property to Leonila B. Caliston (Caliston), who was later issued Transfer Certificate of Title (TCT) No. T-91117[7] on June 29, 1976.[8]

On January 13, 2003, the State, represented by the Regional Executive Director of the Department of Environment and Natural Resources (DENR), Region VI, Iloilo City, through the Office of the Solicitor General (OSG), filed a Complaint[9] for annulment of title and/or reversion of land with the RTC, Branch 61 of Kabankalan City, Negros Occidental. The State claimed that the property is inalienable public land because it fell within a timberland area indicated under Project No. 27-C, Block C per Land Classification (LC) Map No. 2978, as certified by the Director of Forestry on January 17, 1986.[10]

The spouses Dioscoro and Estrella Escarda (spouses Escarda) intervened,[11] alleging that they have been occupying the property since 1976 on the belief that it belongs to the State.[12] They prayed that Caliston be ordered to cease and desist from ejecting them.[13]

In answer, Caliston countered that the property is not timberland. Invoking laches and prescription, she argued that her title was issued earlier in 1962, while the map shows that the property was classified only in 1986.[14] Caliston also claimed

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[7] *Id.* at 9.

[8] *Rollo*, p. 26.

[9] RTC records, pp. 1-5. The case was docketed as Civil Case No. 1114 and titled "*Republic of the Philippines, represented by the Regional Executive Director of the DENR, Region VI, Iloilo City v. Valentina Espinosa, Leonila B. Caliston and the Register of Deeds for the Province of Negros Occidental*."

[10] *Id.* at 2.

[11] *Id.* at 28-32. Spouses Escarda filed a Complaint in Intervention dated June 2, 2003.

[12] *Id.* at 29.

[13] *Id.* at 31.

[14] *Id.* at 21-26.

that the spouses Escarda lacked the capacity or personality to intervene because only the State may initiate an action for reversion. She also alleged that the spouses Escarda cannot claim a better right as against her because she merely tolerated their occupancy of the property until their refusal to vacate it.[15] As counterclaim, Caliston claimed for moral and exemplary damages, attorney's fees and litigation expenses against the spouses Escarda for the baseless and malicious complaint.[16]

The RTC rendered a Decision[17] dated May 12, 2004. Relying on LC Map No. 2978, the trial court ruled in favor of the State and ordered the reversion of the property to the mass of the public domain, *viz.*:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Declaring Original Certificate of Title No. 191-N in the name of Valentina Espinosa and all its derivative titles, such as: TCT No. T-91117 in the name of Leonila Caliston, null and void ab initio;

2. Ordering defendants to surrender the owner's duplicate copy of OCT No. 191-N and TCT N[o]. T-91117 to defendant Register of Deeds for the Province of Negros Occidental and the latter to cancel said titles and all their derivative titles, if any;

3. Ordering the reversion of the land covered by the aforesaid patent and title to the mass of the public domain under the administration and disposition of the Director of Forestry (now Regional Executive Director, Region VI, Iloilo City);

4. Declaring that defendant Leonila Caliston has better right over the subject lot as against intervenors Spouses Dioscoro and Estrella Escarda; and

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[15] *Id.* at 45-46.

[16] *Id.* at 23-24; 47-48. It is admitted by the parties that Caliston filed an unlawful detainer case against the spouses Escarda before the Municipal Trial Court of Sipalay Negros Occidental and which was pending at the time the spouses intervened in the present case. *Id.* at 29; 45.

[17] *Supra* note 4.

5. Ordering the intervenors to pay defendant Leonila Caliston the following sums:

   a) Not less than ₱20,000.00 for moral damages;

   b) Not less than ₱10,000.00 for exemplary damages;

   c) Not less than ₱10,000.00 for attorney's fees, plus so much appearance fees of ₱2,000.00 incurred and/or paid by answering defendant in connection with this case; and

   d) Not less than ₱5,000.00 for expenses of litigation.

   SO ORDERED.[18]

Caliston's motion for reconsideration[19] was denied in an Order[20] dated July 16, 2004. On August 5, 2004, Caliston filed a Notice of Appeal[21] with the RTC. On the other hand, the spouses Escarda did not file a notice of appeal. Records were then forwarded to the CA, where proceedings ensued.

There, Caliston argued that the trial court improperly relied upon LC Map No. 2978, which was prepared long after the property was alienated and awarded to Espinosa, her predecessor-in-interest. The map, the admissibility and genuineness of which have yet to be proved, cannot be used to defeat the cadastral proceedings presumed to have been regularly conducted. Even assuming the map can be considered, Caliston claims that her property is situated in an area indicated as alienable and disposable. She also reiterated her defenses of laches and prescription.[22]

For its part, the State argued that the lower court did not err in relying upon LC Map No. 2978 though it was prepared only in 1986. According to the State, forest lands are incapable of

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[18] RTC records, pp. 104-105.

[19] *Id.* at 119-126.

[20] *Id.* at 134.

[21] *Id.* at 135-138.

[22] CA *rollo*, pp. 19-38; 125-134.

private appropriation and possession, however long; prescription does not run against the government.[23]

The CA rendered a Decision[24] dated July 25, 2008 modifying the RTC Decision. It upheld the validity of OCT No. 191-N and TCT No. 91117 issued in the names of Espinosa and Caliston, respectively, and affirmed the award of damages, attorney's fees, and expenses of litigation in favor of Caliston.

The CA found that the State failed to prove fraud or misrepresentation on the part of Espinosa when she was issued OCT No. 191-N. It further ruled that the State failed to prove that the property is forest land. The lone piece of evidence consisting of LC Map No. 2978, certified by the Director of Forestry on January 17, 1986, was not authenticated pursuant to Section 24,[25] Rule 132 of the Rules of Court. It noted that the parties stipulated only as to the existence of the map, but not as to its genuineness or the truthfulness of its content. Assuming that the map is admitted in evidence, Espinosa's rights over the property, which accrued in 1962, should not be prejudiced by a subsequent classification by the State done in 1986, or after 24 years.[26] The CA cited[27] the case of *SAAD Agro-Industries, Inc. v. Republic of the Philippines*.[28]

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[23] *Id.* at 91-106.

[24] *Supra* note 2.

[25] RULES OF COURT, Rule 132, Sec. 24. *Proof of official record*. — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

[26] *Rollo*, pp. 31-33.

[27] *Id.* at 29-30.

[28] G.R. No. 152570, September 27, 2006, 503 SCRA 522.

In a Resolution[29] dated February 4, 2009, the CA denied the State's Motion for Reconsideration.

Hence, this petition.

The lone issue presented is whether the State has sufficiently proved that the property is part of inalienable forest land at the time Espinosa was granted the cadastral decree and issued a title.

We deny the petition.

I

The State failed to prove that the property was classified as forest land at the time of the grant of the cadastral decree and issuance of title to Espinosa.

In land registration proceedings, the applicant has the burden of overcoming the presumption of State ownership. It must establish, through incontrovertible evidence, that the land sought to be registered is alienable or disposable based on a positive act of the government.[30] Since cadastral proceedings are governed by the usual rules of practice, procedure, and evidence, a cadastral decree and a certificate of title are issued only after the applicant proves all the requisite jurisdictional facts—that they are entitled to the claimed lot, that all parties are heard, and that evidence is considered.[31] As such, the cadastral decree is a judgment which adjudicates ownership after proving these jurisdictional facts.[32]

Here, it is undisputed that Espinosa was granted a cadastral decree and was subsequently issued OCT No. 191-N, the

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[29] *Supra* note 3.

[30] See *Secretary of the Department of Environment and Natural Resources v. Yap*, G.R. No. 167707, October 8, 2008, 568 SCRA 164, 192.

[31] *Tan Sing Pan v. Republic*, G.R. No. 149114, July 21, 2006, 496 SCRA 189, 196.

[32] *Id.* at 196-198, citing *Government of the Philippine Islands v. Abural*, 39 Phil. 996 (1919).

predecessor title of Caliston's TCT No. 91117. Having been granted a decree in a cadastral proceeding, Espinosa can be presumed to have overcome the presumption that the land sought to be registered forms part of the public domain.[33] This means that Espinosa, as the applicant, was able to prove by incontrovertible evidence that the property is alienable and disposable property in the cadastral proceedings.

This is not to say, however, that the State has no remedy to recover the property if indeed it is part of the inalienable lands of the public domain. The State may still do so through an action for reversion, as in the present case.

Reversion is the remedy where the State, pursuant to the Regalian doctrine, seeks to revert land back to the mass of the public domain.[34] It is proper when public land is fraudulently awarded and disposed of to private individuals or corporations.[35] There are also instances when we granted reversion on grounds other than fraud, such as when a "person obtains a title under the Public Land Act which includes, by oversight, lands which cannot be registered under the Torrens system, or when the Director of Lands did not have jurisdiction over the same because it is of the public domain."[36]

In this case, the State, through the Solicitor General, alleges neither fraud nor misrepresentation in the cadastral proceedings and in the issuance of the title in Espinosa's favor. The argument for the State is merely that the property was unlawfully included in the certificate of title because it is of the public domain.

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[33] See *Republic v. Leonor*, G.R. No. 161424, December 23, 2009, 609 SCRA 75, 85.

[34] See *Republic v. Mangotara*, G.R. No. 170375, July 7, 2010, 624 SCRA 360, 473-474.

[35] *Id.* at 473, citing *Estate of the Late Jesus S. Yujuico v. Republic*, G.R. No. 168661, October 26, 2007, 537 SCRA 513.

[36] *Id.* at 489, citing *Morandarte v. Court of Appeals*, G.R. No. 123586, August 12, 2004, 436 SCRA 213, 225.

Since the case is one for reversion and not one for land registration, the burden is on the State to prove that the property was classified as timberland or forest land *at the time it was decreed to Espinosa*.[37] To reiterate, there is no burden on Caliston to prove that the property in question is alienable and disposable land.[38] At this stage, it is reasonable to presume that Espinosa, from whom Caliston derived her title, had already established that the property is alienable and disposable land considering that she succeeded in obtaining the OCT over it.[39] In this reversion proceeding, the State must prove that there was an oversight or mistake in the inclusion of the property in Espinosa's title because it was of public dominion. This is consistent with the rule that the burden of proof rests on the party who, as determined by the pleadings or the nature of the case, asserts the affirmative of an issue.[40]

Here, the State hinges its whole claim on its lone piece of evidence, the land classification map prepared in 1986. The records show, however, that LC Map No. 2978 was not formally offered in evidence. The rules require that documentary evidence must be formally offered in evidence after the presentation of testimonial evidence, and it may be done orally, or if allowed by the court, in writing.[41] Due process requires a formal offer of evidence for the benefit of the adverse party, the trial court, and the appellate courts.[42] This gives the adverse party the opportunity to examine and oppose the admissibihty of the evidence.[43] When evidence has not been

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[37] See *Republic v. Development Resources Corporation*, G.R. No. 180218, December 18, 2009, 608 SCRA 591, 594.

[38] See *Republic v. Leonor, supra* note 33.

[39] *Id.*

[40] *Republic v. Bellate*, G.R. No. 175685, August 7, 2013, 703 SCRA 210, 221.

[41] RULES OF COURT, Rule 132, Sec. 35.

[42] *Republic v. Reyes-Bakunawa*, G.R. No. 180418, August 28, 2013, 704 SCRA 163, 192.

[43] *Id.* at 192, citing *Union Bank of the Philippines v. Tiu*, G.R. Nos. 173090-91, September 7, 2011, 657 SCRA 86, 110.

formally offered, it should not be considered by the court in arriving at its decision.[44] Not having been offered formally, it was error for the trial court to have considered the survey map. Consequently, it also erred in ordering the reversion of the property to the mass of the public domain on the basis of the same.

Moreover, even assuming that the survey *can* be admitted in evidence, this will not help to further the State's cause. This is because the only fact proved by the map is one already admitted by the State, that is, that the land was reclassified in 1986.[45] This fact does not address the presumption/conclusion that Espinosa has, at the time of the cadastral proceedings conducted in 1955, proved that the land is alienable and disposable, as evidenced by the decree issued in his favor *in 1962*.

II

The reclassification of the area where the property is located in 1986 should not prejudice Espinosa and her successor-in-interest.[46] Apropos is the case of *Sta. Monica Industrial and Dev't. Corp. v. Court of Appeals*.[47] In that case, the State offered in evidence a land classification map to prove that at the time the land was decreed to the original owner, it had not yet been released and still fell within the forest zone. However, the map did not conclusively state the actual classification of the land at the time it was adjudicated to the original owner. We thus

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[44] RULES OF COURT, Rule 132, Sec. 34.

[45] The Memorandum/Position Paper of the plaintiff Republic dated June 2, 2004 in Civil Case No. 1114 states:

x x x In a reclassification of the public lands conducted by the Bureau of Forestry on January 17, 1986 in the vicinity where the land in question is situated, the said land was plotted on Bureau Forestry map L.C. No. 2978 to be inside the area which was reverted to the category of public forest. RTC records, p. 107.

[46] See *Republic v. Court of Appeals*, G.R. No. L-46048, November 29, 1988, 168 SCRA 77, 83-84.

[47] G.R. No. 83290, September 21, 1990, 189 SCRA 792.

ruled that the State failed to prove that the titles should be annulled—

Finally, we find the need to emphasize that in an action to annul a judgment, the burden of proving the judgment's nullity rests upon the petitioner. The petitioner must establish by clear and convincing evidence that the judgment is fatally defective. When the proceedings were originally filed by the Republic before the Court of Appeals, the petitioner contended that when the decree in favor of De Perio was issued by Judge Ostrand in 1912 the parcels of land were still part of the inalienable public forests. However, petitioner's case rested solely on land classification maps drawn several years *after the issuance of the decree in 1912*. **These maps fail to conclusively establish the actual classification of the land in 1912 and the years prior to that.** Before this Court, petitioner reiterates said contention and refers, for the first time, to a 1908 proclamation reserving the land in Zambales as a naval reservation and alleging that the subject parcels of land are parts thereof. These, for reasons discussed earlier, are insufficient to overcome the legal presumption in favor of the decree's regularity, more so when we consider that notice of the application for registration and the date of hearing thereof, addressed to the Attorney General, the Director of Lands, the Director of Public Works and the Director of Forestry, among others, was published in the Official Gazette and that Governor General Smith's Proclamation of 1908 itself recognizes private rights.[48]

We stress that our ruling is not inconsistent with the doctrine that forest lands are outside the commerce of man and unsusceptible of private appropriation. Neither are we changing the rule on imprescriptibility of actions for reversion. We are merely deciding on the facts as proved by the record. To allow a reversion based on a classification made at the time when the property was already declared private property by virtue of a decree would be akin to expropriation of land without due process of law.[49]

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[48] *Id.* at 800. Italics and emphasis supplied.

[49] CONSTITUTION, Art. III, Sec. 1. 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 laws.

Sec. 9. Private property shall not be taken for public use without just compensation.

At this juncture, we agree with the CA's application of *SAAD Agro-Industries, Inc.*,[50] which involved a complaint for annulment of title and reversion of a lot covered by a free patent and original title. To support its claim that the lot was part of the timberland and forest reserve, the State submitted as evidence a photocopy of a land classification map. This map also became the basis of the testimonies of City Environment and Natural Resources Office officers declaring that the lot falls within the timberland or forest reserve. The State, however, failed to submit either a certified true copy or an official publication of the map, prompting the trial court to deny its admission in evidence. After proceedings, the trial court dismissed the complaint due to the State's failure to show that the subject lot therein is part of the timberland or forest reserve or has been classified as such before the issuance of the free patent and the original title. The CA, relying on the map, reversed the trial court.

When the case was brought before this court, we reinstated the trial court's decision. We held that the photocopy of the land classification map cannot be considered in evidence because it is excluded under the best evidence rule. We emphasized that all parties, including the Government, are bound by the rules of admissibility and must comply with it—

> The rules of admissibility must be applied uniformly. The same rule holds true when the Government is one of the parties. The Government, when it comes to court to litigate with one of its citizens, must submit to the rules of procedure and its rights and privileges at every stage of the proceedings are substantially in every respect the same as those of its citizens; it cannot have a superior advantage. This is so because when a [sovereign] submits itself to the jurisdiction of the court and participates therein, its claims and rights are justiciable by every other principle and rule applicable to the claims and rights of the private parties under similar circumstances. Failure to abide by the rules on admissibility renders the L.C. Map submitted by respondent inadmissible as proof to show that the subject lot is part of the forest reserve.[51]

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[50] *Supra* note 28.

[51] *Id.* at 532-533. Citations omitted.

We went on to explain that even if the map was admitted in evidence to prove that the lot was classified as part of the timberland or forest reserve, the classification was made long after private interests had intervened. Not only was the lot already occupied and cultivated, a free patent and a certificate of title were also awarded and issued years ahead of the classification—

> Even assuming that the L.C. Map submitted by respondent is admissible in evidence, still the land in question can hardly be considered part of the timberland or forest reserve. L.C. Map No. 2961, which purports to be the "correct map of the areas demarcated as permanent forest pursuant of the provisions of P.D. No. 705 as amended" was made only in 1980. Thus, the delineation of the areas was made nine (9) years after Orcullo was awarded the free patent over the subject lot.
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> Obviously, private interests have intervened before classification was made pursuant to P.D. No. 705. Not only has Orcullo by herself and through her predecessors-in-interest cultivated and possessed the subject lot since 1930, a free patent was also awarded to her and a title issued in her name as early as 1971. In fact, it appears that the issuance of the free patent and certificate of title was regular and in order. Orcullo complied with the requisites for the acquisition of free patent provided under Commonwealth Act No. 141 (Public Land Act), as certified by the Director of Lands and approved by the Secretary of Agriculture and Natural Resources.
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> The Regalian doctrine is well-enshrined not only in the present Constitution but also in the 1935 and 1973 Constitutions. The Court has always recognized and upheld the Regalian doctrine as the basic foundation of the State's property regime. Nevertheless, in applying this doctrine, we must not lose sight of the fact that in every claim or right by the Government against one of its citizens, the paramount considerations of fairness and due process must be observed. Respondent in this case failed to show that the subject lot is part of timberland or forest reserve it adverted to. In the face of the uncontroverted status of Free Patent No. 473408 and OCT No. 0-6667 as valid and regular issuances, respondent's insistence

on the classification of the lot as part of the forest reserve must be rejected.[52]

These principles laid down in *SAAD Agro-Industries, Inc.* undoubtedly apply here. As part of fair play and due process, the State is as bound by the rules on formal offer of evidence as much as every private party is. More, the State's subsequent reclassification of the area where the property is situated cannot be used to defeat the rights of a private citizen who acquired the land in a valid and regular proceeding conducted 24 years earlier.

The result would have been different had the State proved that the property was already classified as part of forest land *at the time of the cadastral proceedings and when title was decreed to Espinosa in 1962*. However, it failed to discharge this burden; the grant of title which carries with it the presumption that Espinosa had already proved the alienable character of the property in the cadastral proceedings stands. To grant the reversion based on a subsequent reclassification, more so on lack of evidence, would amount to taking of privateproperty without just compensation and due process of law.[53] This, however, is not what our Constitution envisions; fairness and due process are paramount considerations that must still be observed.[54]

WHEREFORE, the petition for review on *certiorari* is **DENIED**. The Court of Appeals' July 25, 2008 Decision and February 4, 2009 Resolution are **AFFIRMED**. No costs.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Reyes*, and *Tijam, JJ.*, concur.

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[52] *Id.* at 533-535. Citations omitted.

[53] CONSTITUTION, Art. III, Secs. 1 & 9.

[54] *SAAD Agro-Industries, Inc. v. Republic, supra* note 28 at 535.

THIRD DIVISION

[G.R. No. 187342. April 5, 2017]

ROBERT C. MARTINEZ, *petitioner, vs.* **NOEL S. BUEN,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; DISMISSAL DUE TO FAULT OF PLAINTIFF; UNLESS OTHERWISE QUALIFIED BY THE COURT, A DISMISSAL UNDER SECTION 3, RULE 17 OF THE RULES OF COURT IS CONSIDERED WITH PREJUDICE, WHICH BARS THE REFILING OF THE CASE; PROPER REMEDY IS APPEAL.—** A dismissal based on any of the grounds in Section 3, Rule 17 of the Rules of Court has the effect of an adjudication on the merits. Unless otherwise qualified by the court, a dismissal under said rule is considered with prejudice, which bars the refiling of the case. When an order completely disposes of the case and leaves nothing to be done by the court, it is a final order properly subject of an appeal. The May 5, 2006 Order of the MeTC is an order of dismissal pursuant to Section 3, Rule 17. Since it was silent as to whether the dismissal of the case was with prejudice, the general rule would apply, that is, the same would be considered to be one with prejudice. Under the circumstances, Buen's remedy would have been to file an ordinary appeal in the RTC pursuant to Rule 40 of the Rules of Court.

2. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE RULE THAT *CERTIORARI* WILL NOT LIE AS A SUBSTITUTE FOR APPEALS ADMITS SEVERAL EXCEPTIONS; WHERE THE TRIAL COURT JUDGE CAPRICIOUSLY AND WHIMSICALLY EXERCISED HIS JUDGMENT, PRESENT IN CASE AT BAR.—** Here, Buen filed a petition for *certiorari* under Rule 65. Since a special civil action for *certiorari* can only be entertained when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law, the RTC could have dismissed Buen's petition outright. The rule that *certiorari* will not lie as a substitute for appeal,

however, admits of exceptions. *Certiorari* may be considered a proper remedy despite the availability of appeal or other remedy in the ordinary course of law in the following instances: "(*a*) when it is necessary to prevent irreparable damages and injury to a party; **(*b*) where the trial judge capriciously and whimsically exercised his judgment;** (*c*) where there may be danger of a failure of justice; (*d*) where an appeal would be slow, inadequate, and insufficient; (*e*) where the issue raised is one purely of law; (*f*) where public interest is involved; and (*g*) in case of urgency." The second exception is present in this case. We find that the MeTC judge capriciously and whimsically exercised his judgment when he: (1) treated Martinez' (belated) Comment/Opposition as a motion for reconsideration of the April 11, 2006 Order; (2) set aside the April 11, 2006 Order on the basis of the Comment/Opposition; and (3) dismissed the case without stating the specific ground on which the dismissal was based.

3. ID.; ID.; ID.; IN GIVING DUE COURSE TO THE COMMENT/OPPOSITION AS A MOTION FOR RECONSIDERATION DESPITE SUBSTANTIVE AND PROCEDURAL BARRIERS, THE METROPOLITAN TRIAL COURT EVIDENTLY SHOWED PARTIALITY, WHICH MAKES THE EXTRAORDINARY REMEDY OF *CERTIORARI* PROPER; CASE AT BAR.— Grave abuse of discretion is defined as a "capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility." The MeTC gravely abused its discretion when it treated the Comment/Opposition as a motion for reconsideration of its order granting Buen's Motion to Archive the case. x x x Martinez does not deny receiving notice of the Motion to Archive and hearing scheduled to argue said motion. Hence, by his failure to attend the hearing and file any pleading opposing Buen's motion, Martinez is deemed to have acquiesced to the archiving of the case. When Martinez later changed his mind and filed the Comment/Opposition, the MeTC not only accepted the belated filing, it also treated the same as a motion for reconsideration of its April 11, 2006 Order. This the MeTC cannot do. x x x In this case, Martinez' Comment/Opposition does not comply

with the *formal* requisites of a motion for reconsideration. x x x In treating the Comment/Opposition as a motion for reconsideration, the MeTC disregarded the long line of cases where we ruled that a motion for reconsideration, just like any other motion, requires a notice of hearing, without which, the motion is considered as a mere scrap of paper. Being a *pro forma* motion, the MeTC should not have acted on the Comment/Opposition. Notably, neither does the Comment/Opposition comply with the *substantive* requirements of a motion for reconsideration. The Comment/Opposition did not make any express reference to the findings or conclusions of the MeTC Order of Dismissal that are not supported by evidence or the law, as required under Section 2, Rule 37 of the Rules of Court referring to the contents of a motion for reconsideration. In giving due course to the Comment/Opposition as a motion for reconsideration despite the substantive and procedural barriers, the MeTC evidently showed partiality to the cause of Martinez. Both the RTC and the CA are correct in finding that the MeTC took the cudgels for Martinez to Buen's prejudice. We find that the arbitrary and despotic manner by which the MeTC disregarded mandatory rules to favor Martinez truly calls for the extraordinary remedy of *certiorari*.

4. **ID.; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; FOUR GROUNDS FOR DISMISSAL OF A CASE DUE TO FAULT OF THE PLAINTIFF, CITED.—** Section 3, Rule 17 of the Rules of Court provides four grounds for dismissal of a case due to the fault of the plaintiff. These are: a. Failure to appear on the date of the presentation of his evidence in chief; b. Failure to prosecute for an unreasonable length of time; c. Failure to comply with the Rules of Court; and d. Failure to comply with the order of the court.

5. **ID.; ID.; JUDGMENTS AND FINAL ORDERS; COURTS CANNOT GRANT A RELIEF NOT PRAYED FOR IN THE PLEADINGS OR IN EXCESS OF WHAT IS BEING SOUGHT BY THE PARTY.—** The MeTC granted a relief not prayed for or in excess of what was sought by the party in his pleading. x x x In *Diona v. Balangue*, we held that courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by the party. It is improper for a court to enter an order which exceeds the scope of

relief sought in the pleadings in the absence of a notice which affords the opposing party an opportunity to be heard with respect to the proposed relief. Due process considerations justify this requirement to prevent surprise to the defendant. In this case, the MeTC did not inform Buen that the Comment/Opposition would be treated as a motion for reconsideration of the April 11, 2006 Order. It thus came as a surprise to Buen that the action would be dismissed with prejudice on account of the belatedly filed Comment/Opposition.

6. **ID.; ID.; ID.; A JUDGMENT OR FINAL ORDER MUST STATE CLEARLY AND DISTINCTLY THE FACTS AND THE LAW ON WHICH THE JUDGMENT OR FINAL ORDER IS BASED; EFFECT OF VIOLATION.—** In *Shimizu Philippines Contractors, Inc. v. Magsalin*, we ruled that an order of dismissal that has the effect of an adjudication on the merits should conform with Section 1, Rule 36 of the Rules of Court, (referring to judgments or final orders of the court); otherwise, the dismissal shall be considered as a denial of due process and is thus a nullity. The stated provision mandates that a judgment or final order must state clearly and distinctly the facts and the law on which the judgment or final order is based. Here, the MeTC Order of Dismissal has the effect of an adjudication on the merits. Thus, Section 1, Rule 36 of the Rules of Court applies. However, far from being clear, the MeTC Order of Dismissal left all the parties and the courts guessing as to its basis. It is therefore a patent nullity.

APPEARANCES OF COUNSEL

Cabochan Valera Carlos and Associates for petitioner.
Icaonapo Litong & Associates for respondent.

D E C I S I O N

JARDELEZA, *J.*:

This is a Petition for Review on *Certiorari*[1] seeking the reversal of the December 19, 2008 Decision[2] and March 6, 2009 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 101620. The CA affirmed the November 20, 2007 Decision[4] of the Regional Trial Court of Manila (RTC), Branch 14, which in turn nullified the May 5, 2006 Order[5] of the Metropolitan Trial Court of Manila (MeTC), Branch 16. The MeTC dismissed the case filed by respondent Noel S. Buen (Buen) against petitioner Robert C. Martinez (Martinez) pursuant to Section 3, Rule 17 of the Rules of Court.

On April 6, 2005, Buen filed in the MeTC an Action for Recovery of Personal Property against Martinez, docketed as Civil Case No. 180403-CV.[6] Buen sought to recover a Toyota Tamaraw Revo with plate number WFG-276 (vehicle), claiming ownership over the same based on a certificate of registration under his name.[7] He narrated that he organized a corporation named Fairdeal Chemical Industries, Inc. (Fairdeal) with Martinez and a certain Benjamin Gonzales. As the majority shareholder of Fairdeal, he allowed the company the use of his personal cars, among them, the vehicle. Buen averred that Martinez now claims that the vehicle was owned by Fairdeal and refuses to return its possession despite Buen's repeated demands.[8]

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[1] *Rollo*, pp. 13-40.

[2] *Id.* at 42-51. Penned by Associate Justice Normandie B. Pizarro with Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta, concurring.

[3] *Id.* at 59-60.

[4] *Id.* at 103-108.

[5] *Id.* at 69. Penned by Presiding Judge Crispin B. Bravo.

[6] *Id*. at 44.

[7] *Id*. at 43; CA *rollo*, p. 71.

[8] CA *rollo*, pp. 56-57.

In his Answer with Compulsory Counterclaim,[9] Martinez alleged that all the vehicles utilized by Fairdeal were purchased using corporate funds; only that Buen surreptitiously registered some of them under his name.[10] By way of counterclaim, he asked for moral and exemplary damages and attorney's fees.[11]

After Buen posted the required bond, the MeTC in an Order dated April 19, 2005 awarded the possession of the vehicle to Buen.[12]

During the pendency of the civil action, Martinez filed a Complaint for Qualified Theft against Buen in the RTC of Manila, Branch 19, docketed as Criminal Case No. 05-240813.[13] A warrant of arrest was issued against Buen who, thereafter, went into hiding.[14]

Trial ensued in the action for recovery of personal property. On the scheduled date of hearing on March 28, 2006, Buen's counsel manifested in open court that Buen cannot attend his cross-examination and prayed that the case be archived.[15] The MeTC ordered Buen's counsel to formalize his motion and for Martinez to file his comment within 10 days from receipt thereof. Thus, Buen's counsel filed a formal Motion to Send Case to the Files of the Archives with Leave of Court[16] (Motion to Archive) dated March 31, 2006 and set the same for hearing on April 11, 2006. Despite notice, Martinez failed to appear during the scheduled hearing. He also did not file a comment to the Motion to Archive as directed by the MeTC. Thus, on

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[9] *Id.* at 36-41.

[10] *Id.* at 38.

[11] *Id.* at 39.

[12] *Rollo*, p. 77.

[13] *Id.* at 44.

[14] CA *rollo*, p. 52.

[15] *Rollo*, p. 69.

[16] *Id.* at 62-65.

April 11, 2006, the MeTC, in open court, granted the Motion to Archive the case.[17]

Claiming that he had no knowledge of the Order granting temporary archiving of the case, Martinez, on April 21, 2006, filed a Comment/Opposition to the Motion to Remand the Case to the Archives[18] (Comment/Opposition) and prayed that the motion filed by Buen's counsel be denied.

In an Order[19] dated May 5, 2006 (MeTC Order of Dismissal), the MeTC treated Martinez' Comment/Opposition as a motion for reconsideration of the April 11, 2006 Order and dismissed the case pursuant to the provisions of Section 3,[20] Rule 17 of the Rules of Court. On July 18, 2006, Buen filed a Motion to Set Aside Order (of Dismissal).[21]

In the meantime, Martinez filed a Motion to Quash the Writ of Seizure (Motion to Quash) earlier issued by the MeTC.[22] In response, Buen filed an Opposition stating that the filing of the Motion to Quash is premature because the dismissal of the case is not yet final. He contended that Martinez failed to prove, by way of preponderance of evidence, his title and right of possession over the vehicle.[23]

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[17] *Id.* at 45.

[18] *Id.* at 66-68.

[19] *Supra* note 5.

[20] Sec. 3. *Dismissal due to fault of plaintiff.* – If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

[21] *Rollo*, p. 79.

[22] *Id.* at 114.

[23] *Id.* at 78.

On November 13, 2006, the MeTC acted favorably on Martinez' Motion to Quash and ordered Buen to return the vehicle to Martinez. It, however, amended its Order on November 27, 2006, directing Buen to surrender possession of the vehicle to the sheriff instead.[24]

On December 13, 2006, Buen filed a motion seeking reconsideration of the Order directing Buen to return the vehicle to Martinez. Buen also informed the court that he has since been detained in the Manila City Jail and was now ready for cross-examination.[25]

The MeTC denied Buen's motion for reconsideration in its Order dated January 25, 2007.[26] It declared that the Order dated November 13, 2006 had already attained finality and could no longer be disturbed.

Buen filed a Petition for *Certiorari*[27] in the RTC, pleading that the MeTC acted in grave abuse of discretion when it treated Martinez' Comment/Opposition as a motion for reconsideration of the April 11, 2006 Order. He argued that the Comment/Opposition had already been rendered moot and academic by the April 11, 2006 Order granting the Motion to Archive.[28] He also noted that the Comment/Opposition did not conform to the intents and purposes of a motion for reconsideration; that no filing fees were paid for the same; and that the Comment/Opposition did not even pray that it should be treated as a motion for reconsideration.[29]

In addition, Buen took issue with the MeTC's dismissal of the case pursuant to Section 3, Rule 17 of the Rules of Court. He contended that unless a party's conduct is so negligent or

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[24] *Id.* at 95.

[25] *Id.* at 70-71.

[26] *Id.* at 88.

[27] *Id.* at 74-86.

[28] *Id.* at 80.

[29] *Id.*

dilatory, courts should consider ordering lesser sanctions other than the dismissal of the case. He maintained that the delay brought about by his non-availability to appear during the trial is "unexpected, unavoidable and justified" and beyond his will.[30]

In a Decision[31] dated November 20, 2007 (RTC Decision), the RTC ruled in favor of Buen, the decretal portion of which reads:

> **WHEREFORE,** all premises considered, the Petition for Certiorari is hereby **GRANTED**. Accordingly, the Orders of the public respondent dated May 5, 2006 and January 25, 2007 are hereby **NULLIFIED**. All derivative Orders therefrom are likewise **SET ASIDE**. Accordingly, the Branch Sheriff of the Metropolitan Trial Court (MeTC), Branch 16, Manila is hereby **DIRECTED** to take over and deliver immediately to the petitioner, the possession of the Toyota Tamaraw Revo with Plate No. WFG-276. Further, the MeTC of Manila, Branch 16, presided over by the public respondent, is hereby **DIRECTED** to set Civil Case No. 180403-CV for continuation of trial on the merits for the reception of the evidence-in-chief of the petitioner, and to hear said case until its termination.
>
> With *costs* against the private respondent.
>
> **SO ORDERED**.[32] (Emphasis and italics in the original.)

The RTC agreed with Buen that Martinez' Comment/Opposition to the Motion to Archive has been rendered moot and academic by the MeTC's April 11, 2006 Order. It ruled that the remedy of Martinez then was to file a motion for reconsideration of the Order. The RTC thus concluded that the MeTC, in treating Martinez' Comment/Opposition as a motion for reconsideration, arrogated upon itself the duty of a party litigant to file a strategic pleading which was on one hand, prejudicial to Buen and, on the other hand, clearly beneficial to Martinez.[33]

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[30] *Rollo*, p. 81.

[31] *Supra* note 4.

[32] *Rollo*, p. 108.

[33] *Id.* at 106.

The RTC also agreed with Buen that the Comment/Opposition should not have been treated as a motion for reconsideration because it did not comply with the substantive and procedural requirements for a motion, such as stating the grounds relied upon, notice of hearing, manner of service, and proof of service.[34]

Further, the RTC stated that Buen did not err in filing a petition for *certiorari* instead of an appeal because it was apparent that the MeTC committed an error in jurisdiction. It also held that while *certiorari* may not be used as a substitute for lost appeal, such rule should not be strictly enforced if the case is genuinely meritorious.[35]

In view of the RTC's Decision in Buen's favor, the MeTC issued an Order[36] dated November 26, 2007 directing the sheriff to take over and deliver possession of the vehicle to Buen.

Without filing a motion for reconsideration of the RTC Decision, Martinez filed a Petition for *Certiorari*[37] in the CA on December 13, 2007. He claims to have dispensed with the filing of the motion for reconsideration due to the tone of finality of the RTC Decision and other special circumstances which warrant immediate action.[38]

Martinez reiterated that a petition for *certiorari* in the RTC is not the proper remedy to challenge the MeTC's Order of April 11, 2006 and that Buen only filed the petition as a substitute for his lost appeal. He argued that Buen did not convincingly justify the reason for the considerable lapse of time before he assailed the MeTC's Order of Dismissal; the RTC, on the other hand, merely assumed the existence of circumstances not mentioned in Buen's petition.[39]

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[34] *Id.* at 106-107.

[35] *Id.* at 107-108.

[36] *Id*. at 101-102.

[37] *Id*. at 110-136.

[38] *Id.* at 118.

[39] *Id.* at 125.

Furthermore, Martinez averred that the MeTC, on its own, may dismiss the case on the ground of failure to prosecute as expressly allowed by Section 3, Rule 17 of the Rules of Court.[40] He argued that the dismissal was proper because Buen was a fugitive from justice as admitted by the latter's counsel in open court and in his written motion to archive. He stated that the MeTC cannot speculate on when Buen would appear to continue the trial of the case and maintained that the pending case should not be held hostage by Buen's illegal and capricious act.[41]

In its Decision[42] dated December 19, 2008 (CA Decision), the CA affirmed the ruling of the RTC and dismissed Martinez' petition for *certiorari*. It found that the MeTC committed grave abuse of discretion when it treated the Comment/Opposition as a motion for reconsideration of the April 11, 2006 Order. The CA explained:

> It should be recalled that the MeTC received the [O]pposition *before* it granted the motion to archive. Thus, when the MeTC granted the motion to archive, it is deemed to have denied the [O]pposition filed by herein Petitioner [Martinez]. And having denied the [O]pposition, it can no longer treat the [O]pposition as a motion for reconsideration.
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> By treating the [O]pposition as a motion for reconsideration, the MeTC in effect took up the cudgels for herein Petitioner. And by doing so, this resulted to the extreme prejudice which would call for the extra-ordinary remedy of certiorari.[43] (Italics in the original.)

Martinez sought reconsideration which the CA denied in its Resolution[44] dated March 6, 2009. The CA held that rules of procedure can be liberally construed since Buen did not

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[40] *Id.* at 130-131.

[41] *Id.* at 131.

[42] *Supra* note 2.

[43] *Rollo*, pp. 49-50.

[44] *Supra* note 3.

deliberately and willfully violate the rules or used them to pervert the ends of justice.[45] Hence, this petition for review.

The sole issue presented is whether a petition for *certiorari* is the proper remedy to assail the MeTC Order of Dismissal.

Martinez submits that Buen availed of the wrong remedy when the latter filed a petition for *certiorari* instead of an appeal from the MeTC Order of Dismissal.[46]

We deny the petition for lack of merit.

I

A dismissal based on any of the grounds in Section 3, Rule 17 of the Rules of Court has the effect of an adjudication on the merits. Unless otherwise qualified by the court, a dismissal under said rule is considered with prejudice, which bars the refiling of the case.[47] When an order completely disposes of the case and leaves nothing to be done by the court, it is a final order properly subject of an appeal.

The May 5, 2006 Order of the MeTC is an order of dismissal pursuant to Section 3, Rule 17. Since it was silent as to whether the dismissal of the case was with prejudice, the general rule would apply, that is, the same would be considered to be one with prejudice. Under the circumstances, Buen's remedy would have been to file an ordinary appeal in the RTC pursuant to Rule 40 of the Rules of Court.

Here, Buen filed a petition for *certiorari* under Rule 65. Since a special civil action for *certiorari* can only be entertained when there is no appeal or any plain, speedy and adequate remedy

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[45] *Rollo*, p. 59.

[46] *Id.* at 184.

[47] *Armed Forces of the Philippines Retirement and Separation Benefits System v. Republic*, G.R. No. 188956, March 20, 2013, 694 SCRA 118, 123-124, citing *De Knecht v. Court of Appeals*, G.R. No. 108015, May 20, 1998, 290 SCRA 223, 239-240.

in the ordinary course of law,[48] the RTC could have dismissed Buen's petition outright. The rule that *certiorari* will not lie as a substitute for appeal, however, admits of exceptions.

Certiorari may be considered a proper remedy despite the availability of appeal or other remedy in the ordinary course of law in the following instances: "(*a*) when it is necessary to prevent irreparable damages and injury to a party; **(*b*) where the trial judge capriciously and whimsically exercised his judgment;** (*c*) where there may be danger of a failure of justice; (*d*) where an appeal would be slow, inadequate, and insufficient; (*e*) where the issue raised is one purely of law; (*f*) where public interest is involved; and (*g*) in case of urgency."[49]

The second exception is present in this case. We find that the MeTC judge capriciously and whimsically exercised his judgment when he: (1) treated Martinez' (belated) Comment/Opposition as a motion for reconsideration of the April 11, 2006 Order; (2) set aside the April 11, 2006 Order on the basis of the Comment/Opposition; and (3) dismissed the case without stating the specific ground on which the dismissal was based.

II

Grave abuse of discretion is defined as a "capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform

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[48] RULES OF COURT, Rule 65.

Sec. 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, nor 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. x x x (Emphasis supplied.)

[49] *Heirs of Spouses Teofilo M. Reterta and Elisa Reterta v. Spouses Lorenzo Mores and Virginia Lopez*, G.R. No. 159941, August 17, 2011, 655 SCRA 580, 594, citing *Francisco Motors Corporation v. Court of Appeals*, G.R. Nos. 117622-23, October 23, 2006, 505 SCRA 8, 20. Emphasis supplied.

a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility."[50]

The MeTC gravely abused its discretion when it treated the Comment/Opposition as a motion for reconsideration of its order granting Buen's Motion to Archive the case.

The Comment/Opposition was filed only on April 21, 2006,[51] or after the RTC had ruled on Buen's motion of the April 11, 2006 Order. Martinez claims that he had no knowledge of the April 11, 2006 Order, hence, his filing of the Comment/Opposition. However, we cannot discount the fact that he knew of Buen's intention to ask for the archiving of the case as early as the March 28, 2006 hearing when Buen's counsel moved, in the presence of Martinez' counsel, for the archiving of the case but was thereafter directed to formalize the same through a written motion. Buen's counsel filed the Motion to Archive on March 31, 2006 and set the same for hearing on April 11, 2006. Martinez and his counsel did not attend the April 11, 2006 hearing. Neither did they file a pleading opposing the Motion to Archive before it was heard. As a result, the MeTC granted Buen's Motion to Archive the case.

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[50] *Tan v. Antazo*, G.R. No. 187208, February 23, 2011, 644 SCRA 337, 342, citing *Office of the Ombudsman v. Magno*, G.R. No. 178923, November 27, 2008, 572 SCRA 272, 286-287, also citing *Suliguin v. Commission on Elections*, G.R. No. 166046, March 23, 2006, 485 SCRA 219, 233; *Philippine Rabbit Bus Lines, Inc. v. Goimco, Sr.*, G.R. No. 135507, November 29, 2005, 476 SCRA 361, 366; *Land Bank of the Philippines v. Court of Appeals*, G.R. No. 129368, August 25, 2003, 409 SCRA 455, 481; *Natalia Realty, Inc. v. Court of Appeals*, G.R. No. 126462, November 12, 2002, 391 SCRA 370, 384; *Microsoft Corporation v. Best Deal Computer Center Corporation*, G.R. No. 148029, September 24, 2002, 389 SCRA 615, 619-620; *Duero v. Court of Appeals*, G.R. No. 131282, January 4, 2002, 373 SCRA 11, 17; *Cuison v. Court of Appeals*, G.R. No. 128540, April 15, 1998, 289 SCRA 159, 171.

[51] Contrary to the CA Decision, we found that the Comment/Opposition reached the MeTC after the Motion to Archive was granted, not before. Regardless, we still find that there is grave abuse of discretion on the part of the MeTC in treating the Comment/Opposition as a motion for reconsideration of the April 11, 2006 Order.

Martinez does not deny receiving notice of the Motion to Archive and hearing scheduled to argue said motion. Hence, by his failure to attend the hearing and file any pleading opposing Buen's motion, Martinez is deemed to have acquiesced to the archiving of the case.

When Martinez later changed his mind and filed the Comment/Opposition, the MeTC not only accepted the belated filing, it also treated the same as a motion for reconsideration of its April 11, 2006 Order.

This the MeTC cannot do.

First. The Comment/Opposition cannot be treated as a motion for reconsideration as it does not comply with the requisites for the same. In *Samma-Likha v. Samma Corporation*,[52] we only allowed a motion for reconsideration to be treated as an appeal because it substantially complies with the formal requisites of the latter.

In this case, Martinez' Comment/Opposition does not comply with the *formal* requisites of a motion for reconsideration. We quote with approval the findings of the RTC:

> Indeed, the petitioner was correct in its observation that the subject Comment/Opposition should not have been treated as a Motion for Reconsideration. Firstly, under Section 3, Rule 15 of the Revised Rules on Civil Procedure, a motion shall state the relief sought to be obtained and the grounds upon which it is based. Certainly, the relief of prayer that was contained in the Comment/Opposition [was] different from the allegations in a Motion for Reconsideration. Secondly, Sections 4, 5 and 6 of the same Rule provide for a strict compliance thereof. Again, the Comment/Opposition failed to comply therewith, especially so, on the requirements of the notice of hearing, manner of service to the adverse party and proof of service thereof, which are all calculated to prevent surprise on the part of the adverse party.[53]

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[52] G.R. No. 167141, March 13, 2009, 581 SCRA 211.

[53] *Rollo*, pp. 106-107.

In treating the Comment/Opposition as a motion for reconsideration, the MeTC disregarded the long line of cases[54] where we ruled that a motion for reconsideration, just like any other motion, requires a notice of hearing, without which, the motion is considered as a mere scrap of paper. Being a *pro forma* motion, the MeTC should not have acted on the Comment/Opposition.

Notably, neither does the Comment/Opposition comply with the *substantive* requirements of a motion for reconsideration. The Comment/Opposition did not make any express reference to the findings or conclusions of the MeTC Order of Dismissal that are not supported by evidence or the law, as required under Section 2,[55] Rule 37 of the Rules of Court referring to the contents of a motion for reconsideration.

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[54] *Resurreccion v. People*, G.R. No. 192866, July 9, 2014, 729 SCRA 508, 527, citing *Sembrano v. Ramirez*, G.R. No. L-45447, September 28, 1988, 166 SCRA 30, 35-36; *Philippine Commercial and Industrial Bank v. Court of Appeals*, G.R. No. 120739, July 20, 2000, 336 SCRA 258, 263; *Tan v. Court of Appeals,* G.R. No. 130314, September 22, 1998, 295 SCRA 755, 763, *De la Peña v. De la Peña,* G.R. No. 116693, July 5, 1996, 258 SCRA 298, 302; *Manila Electric Company v. La Campana Food Products, Inc.,* G.R. No. 97535, August 4, 1995, 247 SCRA 77, 82; *Republic Planters Bank v. Intermediate Appellate Court*, G.R. No. 63805, August 31, 1984, 131 SCRA 631, 637; *Firme v. Reyes*, G.R. No. L-35858, August 21, 1979, 92 SCRA 713, 716.

[55] Sec. 2. *Contents of motion for new trial or reconsideration and notice thereof.* – The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in paragraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by affidavits. A motion for the cause mentioned in paragraph (b) shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions. x x x (Emphasis supplied.)

In giving due course to the Comment/Opposition as a motion for reconsideration despite the substantive and procedural barriers, the MeTC evidently showed partiality to the cause of Martinez. Both the RTC and the CA are correct in finding that the MeTC took the cudgels for Martinez to Buen's prejudice. We find that the arbitrary and despotic manner by which the MeTC disregarded mandatory rules to favor Martinez truly calls for the extraordinary remedy of *certiorari*.

Second. Section 3, Rule 17 of the Rules of Court provides four grounds for dismissal of a case due to the fault of the plaintiff. These are:

a. Failure to appear on the date of the presentation of his evidence in chief;

b. Failure to prosecute for an unreasonable length of time;

c. Failure to comply with the Rules of Court; and

d. Failure to comply with the order of the court.

Here, while the Order indicated that the dismissal was made pursuant to Section 3, Rule 17, it did not provide for the *specific* ground upon which the dismissal was made, leaving Buen (and the appellate courts) to speculate as to the same.

True, none of the parties took issue with the MeTC Order of Dismissal being unclear. This, however, does not prevent us from looking into an unassigned error if its consideration is indispensable or necessary in arriving at a just decision.[56]

Third. The MeTC granted a relief of not prayed for or in excess of what was sought by the party in his pleading. The prayer in Martinez' Comment/Opposition reads:

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[56] *Shimizu Philippines Contractors, Inc. v. Magsalin*, G.R. No. 170026, June 20, 2012, 674 SCRA 65, 76-77, citing *Heirs of Teofilo Gabatan v. Court of Appeals*, G.R. No. 150206, March 13, 2009, 581 SCRA 70; *Ang v. Associated Bank*, G.R. No. 146511, September 5, 2007, 532 SCRA 244; and *Mendoza v. Bautista*, G.R. No. 143666, March 18, 2005, 453 SCRA 691.

WHEREFORE, PREMISES[] CONSIDERED, it is most respectfully prayed of this Honorable Court, that the motion to send this instant case to the archives be denied. Defendant further prays that the testimony of the plaintiff be stricken off the record and the defendant be allowed to present his evidence on his counterclaim at the next scheduled hearing.[57]

In *Diona v. Balangue*,[58] we held that courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by the party.[59] It is improper for a court to enter an order which exceeds the scope of relief sought in the pleadings in the absence of a notice which affords the opposing party an opportunity to be heard with respect to the proposed relief. Due process considerations justify this requirement to prevent surprise to the defendant.[60]

In this case, the MeTC did not inform Buen that the Comment/Opposition would be treated as a motion for reconsideration of the April 11, 2006 Order. It thus came as a surprise to Buen that the action would be dismissed with prejudice on account of the belatedly filed Comment/ Opposition.

Fourth. In *Shimizu Philippines Contractors, Inc. v. Magsalin*,[61] we ruled that an order of dismissal that has the effect of an adjudication on the merits should conform with Section 1, Rule 36 of the Rules of Court, (referring to judgments or final orders of the court); otherwise, the dismissal shall be considered as a denial of due process and is thus a nullity.[62] The stated provision mandates that a judgment or

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[57] *Rollo*, p. 67.

[58] G.R. No. 173559, January 7, 2013, 688 SCRA 22.

[59] *Id.* at 35.

[60] *Id.* at 36, citing *Development Bank of the Philippines v. Teston*, G.R. No. 174966, February 14, 2008, 545 SCRA 422, 429.

[61] *Supra* note 56.

[62] *Id*. at 76.

final order must state clearly and distinctly the facts and the law on which the judgment or final order is based.

Here, the MeTC Order of Dismissal has the effect of an adjudication on the merits. Thus, Section 1, Rule 36 of the Rules of Court applies. However, far from being clear, the MeTC Order of Dismissal left all the parties and the courts guessing as to its basis. It is therefore a patent nullity.

In *Lu Ym v. Nabua*,[63] we held that an order of the court which is a patent nullity for failure to comply with the mandatory provisions of the Rules of Court may be directly assailed through a petition for *certiorari*.[64] We thus rule that Buen correctly availed of the remedy of *certiorari* to challenge the MeTC Order of Dismissal. Indeed, the MeTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it treated the Comment/Opposition as a motion for reconsideration of the April 11, 2006 Order; and on the strength of the same reconsidered its earlier ruling, then dismissed the case without stating the clear provision of law upon which it was based.

WHEREFORE, the petition is **DENIED** for lack of merit. The December 19, 2008 Decision and March 6, 2009 Resolution of the Court of Appeals in CA-G.R. SP No. 101620 are hereby **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Reyes,* and *Tijam, JJ.,* concur.

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[63] G.R. No. 161309, February 23, 2005, 452 SCRA 298.

[64] *Id.* at 311. See also *Heirs of Spouses Teofilo M. Reterta and Elisa Reterta v. Spouses Lorenzo Mores and Virginia Lopez*, *supra* note 49.

THIRD DIVISION

[G.R. No. 197358. April 5, 2017]

BUTUAN DEVELOPMENT CORPORATION (BDC), *petitioner, vs.* **THE TWENTY-FIRST DIVISION OF THE HONORABLE COURT OF APPEALS (Mindanao Station), MAX ARRIOLA, JR., DE ORO RESOURCES, INC. (DORI) and LOUIE A. LIBARIOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *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.— A party cannot substitute the special civil action of *certiorari* under Rule 65 of the Rules of Court for the remedy of appeal. The existence and availability of the right of appeal are antithetical to the availability of the special civil action of *certiorari*. 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.

2. ID.; ID.; ID.; EXCEPTIONS, ENUMERATED AND APPLIED; THE DISMISSAL OF THE PETITION FOR *CERTIORARI* WOULD RESULT IN THE MISCARRIAGE OF JUSTICE.— Nevertheless, the acceptance of a petition for *certiorari*, as well as the grant of due course thereto is, generally, addressed to the sound discretion of the court. The provisions of the Rules of Court, which are technical rules, may be relaxed in certain exceptional situations. While a petition for *certiorari* is dismissible for being the wrong remedy, there are exceptions to this rule, to wit: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires;

(c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority. In view of the factual circumstances in this case, the dismissal of the petition for *certiorari* would result in the miscarriage of justice. On account of the CA's unwarranted dismissal of its complaint, as will be explained later, BDC was effectively denied due process as it was unduly prevented from presenting evidence to prove its claim.

3. ID.; CIVIL PROCEDURE; DISMISSAL OF THE COMPLAINT FOR FAILURE TO STATE A CAUSE OF ACTION; ELEMENTS OF A CAUSE OF ACTION; TEST TO DETERMINE WHETHER THE COMPLAINT STATES A CAUSE OF ACTION OR NOT.— One of the grounds for the dismissal of a complaint is the failure of the pleading asserting the claim to state a cause of action. The elements of a cause of action are: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief. In resolving whether the complaint states a cause of action or not, only the facts alleged in the complaint are considered. The test is whether the court can render a valid judgment on the complaint based on the facts alleged and the prayer asked for. Only ultimate facts, not legal conclusions or evidentiary facts, are considered for purposes of applying the test.

4. ID.; ID.; ID.; ID.; FAILURE TO STATE A CAUSE OF ACTION AND LACK OF CAUSE OF ACTION, DISTINGUISHED.— [F]ailure to state a cause of action is different from lack of cause of action. Failure to state a cause of action refers to the insufficiency of the pleading, and is a ground for dismissal under Rule 16 of the Rules of Court. On the other hand, lack of cause action refers to a situation where the evidence does not prove the cause of action alleged in the pleading. The remedy in the first is to move for the dismissal of the pleading, while the remedy in the second is to demur to the evidence.

APPEARANCES OF COUNSEL

Earl Anthony C. Gambe for petitioner.
Libra Law Firm for respondents.

D E C I S I O N

REYES, *J.*:

This is a petition for *certiorari*[1] under Rule 65 of the Rules of Court seeking to annul and set aside the Decision[2] dated January 14, 2011 and Resolution[3] dated May 24, 2011 issued by the Court of Appeals (CA) in CA-G.R. SP No. 01473.

The Facts

On March 31, 1966, Butuan Development Corporation (BDC), which was then still in the process of incorporation, through its then President Edmundo Satorre (Satorre), purchased from the Spouses Jose and Socorro Sering (Spouses Sering) a 7.6923-hectare parcel of land situated in Butuan City (subject property).[4] Thus, on January 28, 1969, the Registry of Deeds for Butuan City issued Transfer Certificate of Title (TCT) No. RT-4724[5] in the name of BDC.[6]

On May 5, 1998, Max L. Arriola, Jr. (Max Jr.), representing himself as the Chairman of BDC and armed with a duly notarized Resolution[7] of the BDC Board of Directors therefor, mortgaged

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[1] *Rollo*, pp. 5-21.

[2] Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Romulo V. Borja and Ramon Paul L. Hernando concurring; *id*. at 219-226.

[3] *Id*. at 270-271.

[4] *Id*. at 7.

[5] *Id*. at 45-46.

[6] *Id*. at 291.

[7] *Id*. at 50.

the subject property to De Oro Resources, Inc. (DORI) and its President Louie A. Libarios (Libarios).[8]

On May 13, 2002, Satorre, together with Ma. Laurisse Satorre-Gabor, Liza Therese Satorre-Balansag, Edmundo C. Satorre II, and Leslie Mae Satorre-King, executed the Articles of Incorporation[9] of BDC. The Securities and Exchange Commission approved the Articles of Incorporation and issued the Certificate of Incorporation[10] of BDC on May 23, 2002.

On August 23, 2005, BDC filed a complaint for declaration of nullity of real estate mortgage[11] (REM) with the Regional Trial Court (RTC) of Agusan del Norte and Butuan City against Max Jr., Libarios, and DORI (collectively, the respondents), and Casilda L. Arriola, Rebecca J. Arriola, and Joseph L. Arriola. It alleged that, sometime in 2004, it discovered that the owner's duplicate copy of TCT No. RT-4724 was missing and efforts to locate the same proved futile. However, it subsequently discovered that the owner's duplicate copy of TCT No. RT-4724 was already in Libario's possession, pursuant to the REM executed by the Arriolas who misrepresented themselves as the owners and directors of BDC.[12] Accordingly, claiming that the said REM was a nullity, BDC prayed that the same be nullified.[13]

In their answer,[14] Libarios and DORI denied that the Arriolas misrepresented themselves as the directors of BDC since, at the time of the execution of the REM, the Arriolas had possession of the subject property and the owner's duplicate copy of TCT No. RT-4724.[15] Further, the tax declaration over the subject

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[8] *Id*. at 48-49.

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

[10] *Id*. at 57.

[11] *Id*. at 78-87.

[12] *Id*. at 81.

[13] *Id*. at 85.

[14] *Id*. at 118-129.

[15] *Id*. at 123.

property filed with the Butuan City Assessor's Office indicated that Max Arriola, Sr. (Max Sr.) was the administrator of the subject property.[16]

As special and affirmative defense, Libarios and DORI claimed that the complaint filed by BDC should be dismissed outright for failing to state a cause of action since at the time of the execution of the REM on May 5, 1998, BDC did not yet exist, having been incorporated only on May 23, 2002, and, hence, could not have claimed ownership of the subject property.[17]

Max Jr., in his Answer,[18] echoed the foregoing contentions set forth by Libarios and DORI and, additionally, claimed that the owner's duplicate copy of TCT No. RT-4724, from the time it was issued on January 28, 1969, had been in the possession of their family since it was his father Max Sr. who actually paid for the acquisition of the subject property.[19]

Ruling of the RTC

On February 22, 2006, the RTC heard the respondents' special and affirmative defense and, thereafter, directed the parties to submit their respective memoranda.[20]

On August 11, 2006, the RTC issued an Order,[21] the decretal portion of which reads:

> WHEREFORE, in view of the foregoing, the special/affirmative defenses put forward by the defendants cannot be given due consideration for lack of merit.
>
> SO ORDERED.[22]

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[16] *Id*.

[17] *Id*. at 126.

[18] *Id*. at 143-153.

[19] *Id*. at 147.

[20] *Id*. at 29.

[21] Rendered by Presiding Judge Augustus L. Calo; *id*. at 42-43.

[22] *Id*. at 43.

The RTC opined that, taking into account BDC's allegation that it purchased the subject property while it was still in the process of incorporation and, thus, obtained title to the same in its name, any act which amounts to alienation of the subject property done by any person other than the corporation itself, through its Board of Directors, shall give rise to violation of BDC's rights. The respondents filed their respective motions for reconsideration[23] of the Order dated August 11, 2006, but it was denied by the RTC in its Order[24] dated November 24, 2006, the dispositive portion of which reads:

WHEREFORE, in the light of the foregoing, the motion for reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.[25]

The respondents then filed a petition for *certiorari*[26] with the CA, claiming that the RTC gravely abused its discretion in brushing aside their special and affirmative defense. The respondents likewise prayed for the issuance of a temporary restraining order and/or a writ of preliminary injunction. The respondents maintained that BDC, at the time of the execution of the REM, was not yet incorporated and, hence, had no right to hold a property in its own name.

Ruling of the CA

Consequently, on January 14, 2011, the CA rendered the herein assailed Decision,[27] which declared:

WHEREFORE, the instant petition is GRANTED. The assailed Orders are SET ASIDE and a new one issued DISMISSING the Complaint for failure to state a cause of action.

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[23] *Id*. at 180-186; 187-188.

[24] *Id*. at 44.

[25] *Id*.

[26] *Id*. at 23-41.

[27] *Id*. at 219-226.

SO ORDERED.[28]

The CA opined that corporate existence begins only from the moment a certificate of incorporation is issued, and, thus, BDC had no corporate existence and juridical personality when it purchased the subject property. Thus, the CA held that, having no right over the subject property, no cause of action could have accrued in favor of BDC when the subject property was mortgaged to Libarios and DORI.[29]

BDC sought a reconsideration[30] of the Decision dated January 14, 2011, but it was denied by the CA in its Resolution[31] dated May 24, 2011, thus:

ACCORDINGLY, the motion for reconsideration is hereby DENIED for lack of merit.

SO ORDERED.[32]

Hence, this petition.

BDC maintains that it has a cause of action against the respondents notwithstanding that it was not yet incorporated at the time of the execution of the REM on May 5, 1998.[33] Further, BDC alleges that Libarios and DORI are estopped from questioning the legal personality of BDC; it claims that DORI and Libarios, at the time of the execution of the REM, treated BDC as a corporation and may no longer raise the fact that BDC was not yet incorporated at the time they entered into the mortgage.[34]

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[28] *Id*. at 225.

[29] *Id*. at 224-225.

[30] *Id*. at 227-238.

[31] *Id*. at 270-271.

[32] *Id*. at 271.

[33] *Id*. at 13.

[34] *Id*. at 14-15.

On the other hand, the respondents, in their Comment,[35] maintain that this petition for *certiorari* is not the proper remedy to assail the CA's Decision dated January 14, 2011 and Resolution dated May 24, 2011. They aver that BDC should have filed a petition for review on *certiorari* under Rule 45 of the Rules of Court instead.[36] In any case, the respondents claim that the CA did not commit any abuse of discretion when it set aside the RTC's Orders dated August 11, 2006 and November 24, 2006.[37] They point out that BDC was not yet incorporated at the time of the execution of the REM and, hence, could not hold title to any property in its own name.[38]

Issue

Essentially, the issue set forth for the Court's resolution is whether the CA gravely abused its discretion when it set aside the RTC's Orders dated August 11, 2006 and November 24, 2006, ruling that BDC's complaint failed to state a cause of action.

Ruling of the Court

The petition is granted.

Prefatorily, there is a need to address the respondents' claim that BDC should have filed an appeal under Rule 45 of the Rules of Court instead of filing this *certiorari* suit.

The CA's disposition is a final judgment, as distinguished from an interlocutory order, as the same finally disposed of the petition for *certiorari* filed by the respondents and left nothing more to be done by the CA in respect thereto. Sections 1 and 2 of Rule 45 essentially states that a party desiring to appeal by *certiorari* from a **judgment or a final**

[35] *Id*. at 290-317.

[36] *Id*. at 311-312.

[37] *Id*. at 298.

[38] *Id*. at 299.

order of the CA may file with this Court a verified petition for review on *certiorari* within 15 days from notice of the judgment or final order.

BDC's counsel received a copy of the CA's Resolution dated May 24, 2011, denying reconsideration of the Decision dated January 14, 2011, on May 31, 2011.[39] Thus, BDC only had until June 15, 2011 within which to file with this Court a petition for review on *certiorari* assailing the CA's Decision dated January 14, 2011 and Resolution dated May 24, 2011.

However, BDC failed to file a petition for review on *certiorari* within the period to do so and, instead, opted to file a petition for *certiorari* under Rule 65 with this Court on July 4, 2011. Evidently, this petition for *certiorari* is merely being used by BDC as a substitute for the lost remedy of appeal under Rule 45.

A party cannot substitute the special civil action of *certiorari* under Rule 65 of the Rules of Court for the remedy of appeal. The existence and availability of the right of appeal are antithetical to the availability of the special civil action of *certiorari*.[40] 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.[41]

Nevertheless, the acceptance of a petition for *certiorari*, as well as the grant of due course thereto is, generally, addressed to the sound discretion of the court. The provisions of the Rules

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[39] *Id*. at 7.

[40] *Heirs of Placido Miranda v. CA*, 325 Phil. 674, 685 (1996).

[41] *Spouses Leynes v. Former Tenth Division of the Court of Appeals, et al*., 655 Phil. 25, 43(2011), citing *Madrigal Transport, Inc. v. Lapanday Holdings Corp.*, 479 Phil. 768, 782-783 (2004).

of Court, which are technical rules, may be relaxed in certain exceptional situations.[42] While a petition for *certiorari* is dismissible for being the wrong remedy, there are exceptions to this rule, to wit: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority.[43]

In view of the factual circumstances in this case, the dismissal of the petition for *certiorari* would result in the miscarriage of justice. On account of the CA's unwarranted dismissal of its complaint, as will be explained later, BDC was effectively denied due process as it was unduly prevented from presenting evidence to prove its claim. The CA arbitrarily directed the dismissal of BDC's complaint on the ground that the complaint failed to state a cause of action.

One of the grounds for the dismissal of a complaint is the failure of the pleading asserting the claim to state a cause of action.[44] The elements of a cause of action are: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief.[45]

In resolving whether the complaint states a cause of action or not, only the facts alleged in the complaint are considered. The test is whether the court can render a valid judgment on the complaint based on the facts alleged and the prayer asked for. Only ultimate

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[42] See *Spouses Leynes v. Former Tenth Division of the Court of Appeals, et al.*, *id.* at 41.

[43] *Tanenglian v. Lorenzo*, *et al.*, 573 Phil. 472, 488 (2008).

[44] RULES OF COURT, Rule 16, Section 1(g).

[45] *Philippine Daily Inquirer, et al. v. Judge Alameda, et al.*, 573 Phil. 338, 345-346 (2008).

facts, not legal conclusions or evidentiary facts, are considered for purposes of applying the test.[46]

In this case, BDC's complaint, *inter alia*, alleged that:

> 5. Sometime on March 31, 1996, while the **[BDC] was still in the process of incorporation, thru its then President and General Manager, [SATORRE], purchased a parcel of land from the [Spouses Sering],** x x x as evidenced by a Deed of Absolute Sale, machine copy of which is hereto attached as Annex "B" hereof;
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> 6. Subsequent to the execution of Annex "B" hereof, **[TCT] bearing No. RT-4724 was issued unto and in favor of the [BDC]** x x x;
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> 7. [BDC], thru its legitimate officers, has been paying the real estate taxes due on the aforesaid parcel of land, **and not the "[ARRIOLAs]" who are not in any way connected with the legitimate, genuine and authentic plaintiff** x x x;
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> x x x x x x x x x
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> 10. Sometime in the year 2004, [BDC] discovered that the owner's copy of [TCT] bearing No. RT-4724 was missing and efforts to locate the same proved futile as it could nowhere be found, hence [BDC] through counsel filed a petition in Court for issuance of the owner's copy of said title;
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> 11. To [BDC's] great surprise, it surfaced that the aforesaid certificate of title is now in the possession of [Libarios] as it appears that the **land covered by said title was mortgaged to [DORI] by the defendant "ARRIOLAs" who misrepresented themselves as owners and directors of [BDC.]**[47] (Emphasis ours)

Based on the foregoing allegations, BDC's complaint sufficiently stated a cause of action for declaration of nullity of the REM. Basically, BDC alleged in its complaint that it is the owner of the subject property as evidenced by TCT No. RT-4724, which was issued in its name after it purchased the subject property, through Satorre, from the Spouses Sering on March 31, 1966. It bears stressing that a certificate of title issued is an absolute and indefeasible

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[46] *Macaslang v. Spouses Zamora*, 664 Phil. 337, 351 (2011).

[47] *Rollo*, pp. 79-81.

evidence of ownership of the property in favor of the person whose name appears therein.[48] BDC further alleged that the subject property was mortgaged to DORI and Libarios without their knowledge or consent and that the Arriolas were not in any way connected with BDC.

What is clear is that the issues of whether the REM constituted over the subject property is void and whether BDC has a right to the subject property at the time of the execution of the REM would have been best resolved during the trial.

The respondents' affirmative defense that BDC, at the time of the execution of the REM, had no right to hold the subject property in its name being merely an unincorporated association, if at all, amounts to an allegation that BDC has no cause of action against the respondents. However, failure to state a cause of action is different from lack of cause of action. Failure to state a cause of action refers to the insufficiency of the pleading, and is a ground for dismissal under Rule 16 of the Rules of Court. On the other hand, lack of cause of action refers to a situation where the evidence does not prove the cause of action alleged in the pleading.[49] The remedy in the first is to move for the dismissal of the pleading, while the remedy in the second is to demur to the evidence.[50]

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **GRANTED**. The Decision dated January 14, 2011 and Resolution dated May 24, 2011 of the Court of Appeals in CA-G.R. SP No. 01473 are hereby **REVERSED** and **SET ASIDE.** The Orders dated August 11, 2006 and Novemeber 24, 2006 of the Regional Trial Court of Agusan del Norte and Butuan City, Branch 5, in SP Civil Case No. 1259 are **REINSTATED**. The case is remanded to the ttrial court for further proceedings.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Jardeleza, and *Tijam, JJ.,* concur.

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[48] *Serrano v. Spouses Gutierrez*, 537 Phil. 187, 197 (2006).

[49] *Macaslang v. Spouses Zamora*, *supra* note 46, at 353.

[50] *See* Regalado, *REMEDIAL LAW COMPENDIUM,* Vol. 1, 9th Revised Ed. (2005), p. 182.

THIRD DIVISION

[G.R. No. 199894. April 5, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CARLITO CLARO *y* MAHINAY,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DEFENSE OF CONSENSUAL SEXUAL INTERCOURSE INTERPOSED BY THE ACCUSED GIVEN WEIGHT AND CREDIT; CIRCUMSTANCES IN CASE AT BAR SHOWED ELOQUENT PROOF OF THE WOMAN'S CONSENT.— [I]t is not fair and just to quickly reject the defense of consensual sexual intercourse interposed by the accused. To be noted first and foremost is that he and AAA were adults capable of consenting to the sexual intercourse. The established circumstances – their having agreed to go on a lovers' date; their travelling together a long way from their meeting place on board the jeepney; their alighting on Rizal Avenue to take a meal together; their walking together to the motel, and checking in together at the motel without the complainant manifesting resistance; and their entering the designated room without protest from her – indicated beyond all doubt that they had consented to culminate their lovers' date in bed inside the motel. Although she claimed that he had held her by the hand and pulled her upstairs, there is no evidence showing that she resisted in that whole time, or exhibited a reluctance to enter the motel with him. Instead, she appeared to have walked with him towards the motel, and to have entered it without hesitation. What she did not do was eloquent proof of her consent.

2. ID.; ID.; ID.; FINDINGS OF ABRASIONS AND CONTUSIONS DID NOT NEGATE THE POSSIBILITY THAT THE SEXUAL INTERCOURSE RESULTED FROM CONSENSUALITY BETWEEN THEM.— That the medico-legal examination of March 14, 2006 turned up with the findings of abrasions on AAA's left breast and contusions on her right hand did not necessarily mean that the accused had applied force in the context of forcing her to have sex with him. The

conclusion of the CA was, therefore, too sweeping, for it inexplicably ignored the probability of consensuality between the parties. Such findings did not justify the full rejection of the demonstrable consensuality of their sexual intercourse. Moreover, the mere presence of abrasions and contusions on her did not preclude the giving of her consent to the sexual intercourse, for abrasions and contusions *could also be suffered* during voluntary submission of the partners to each other's lust. Such possibility calls for us to open our minds to the conclusion that the sexual intercourse resulted from consensuality between them.

3. ID.; ID.; RATIONALE BEHIND THE REQUIREMENT OF ESTABLISHING THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT; WHERE PROOF BEYOND REASONABLE DOUBT WAS NOT ESTABLISHED, ACQUITTAL OF THE ACCUSED SHOULD FOLLOW.— The requirement of establishing the guilt of the accused in every criminal proceeding beyond reasonable doubt has a long history that even pre-dates our Constitutions. As summed up by jurisprudence of American origin: x x x **The requirement of proof beyond a reasonable doubt has this vital role in our criminal procedure for cogent reasons. The accused during a criminal prosecution has at stake interest of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction. Accordingly, a society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt.** x x x Requiring proof of guilt beyond reasonable doubt necessarily means that mere suspicion of the guilt of the accused, *no matter how strong*, should not sway judgment against him. It further means that the courts should duly consider every evidence favoring him, and that in the process the courts should persistently insist that accusation is not synonymous with guilt; hence, every circumstance favoring his innocence should be fully taken into account. That is what we must be do herein, for he is entitled to nothing less. x x x Without the proof of his guilt being beyond reasonable doubt, therefore, the presumption of innocence in favor of the accused herein was not overcome. His acquittal should follow, for, as we have emphatically reminded in *Patula v. People*: x x x **The burden of proof placed on the Prosecution arises from the presumption of innocence in**

favor of the accused that no less than the Constitution has guaranteed. Conversely, as to his innocence, the accused has no burden of proof, that he must then be acquitted and set free should the Prosecution not overcome the presumption of innocence in his favor.

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.*:

In every criminal case where the accused enjoys the presumption of innocence, he is entitled to acquittal unless his guilt is shown beyond reasonable doubt.

The Case

The accused seeks to undo the decision promulgated on March 24, 2011 in CA-G.R. CR-H.C. No. 03702,[1] whereby the Court of Appeals (CA) affirmed the judgment rendered on November 17, 2008 by the Regional Trial Court (RTC), Branch 21, in Manila convicting him of rape.[2]

Antecedents

The accused was charged with rape under the following information, to wit:

That on or about March 14, 2006, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously, with lewd designs and by means of force, violence and

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[1] *Rollo,* pp. 2-21; penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justice Josefina Guevara-Salonga and Associate Justice Franchito N. Diamante concurring.

[2] CA *rollo,* pp. 68-75; penned by Judge Amor A. Reyes.

intimidation, and fraudulent machination, have carnal knowledge with said AAA,[3] by then and there texting the latter to see each other at the corner of Augusto Francisco Street, inviting her for a stroll at Rizal Avenue, ordering food from Jollibee, bringing her at Aroma Motel under the pretext that they will just talk and eat their food thereat, entering a room at said motel and locking the door, pulling her on the bed and kissing her, underssing (sic) her and thereafter inserting his penis into her vagina then succeeded in having carnal knowledge of her, against her will and consent.

Contrary to law.[4]

Evidence of the Prosecution

At around 9:00 o'clock in the morning of March 14, 2006, AAA, a housemaid, received a text message from the accused asking if they could meet. He was then working as a security guard near AAA's place of work. AAA accepted his invitation and met with him on Augusto San Francisco Street, Sta. Ana, Manila, where they boarded a passenger jeepney bound for Rizal Avenue in Sta. Cruz, Manila. Arriving in Sta. Cruz, they entered a Jollibee restaurant on Rizal Avenue and ordered food. They later on went to a nearby house, later identified as the Aroma Motel. She refused to go up the stairs of the motel, which impelled him to hold her by the hand and pull her upstairs, insisting that they would only talk and eat. He then talked to a male attendant who ushered them into a room.

Upon entering the room, AAA tried to leave, but the accused closed the door and pushed her towards the bed. She still attempted to leave but the door was locked. He pulled her back to the bed, telling her that he loved her. Instead of responding to him, she said that she needed to go to the toilet. Once inside the toilet, she called her cousin, Alberto German (German), a

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[3] The real names of the victim and the members of her immediate family are withheld pursuant to Republic Act No. 9262 *(Anti-Violence Against Women and Their Children Act of 2004)*. Fictitious names shall be used to designate them. See *People vs. Cabalquinto,* G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] CA *rollo*, p. 9.

police officer, but she was unable to give him her exact location after her phone ran out of charge. It was then when the accused barged inside the toilet and again pulled her back to the bed. He forcefully undressed her completely, went on top of her, and forcibly inserted his penis inside her vagina. She kept on punching to try to stop him, but to no avail. After he was done, she immediately put on her clothes and left the room. But she was compelled to ride with him in the same passenger jeepney because she did not know her way back.

Upon arriving home, she promptly reported the incident to German, who instructed her to contact the accused and agree to meet with him again so that they could apprehend him. She did as instructed. Just as they agreed, the accused went to the meeting place, where German quickly approached him and introduced himself as a police officer. The accused tried to run away, but German seized him and brought him to the National Bureau of Investigation (NBI) for investigation.

Dr. Wilfredo E. Tierra, the NBI medico-legal officer, conducted the medico-genital examination of AAA. He found the presence of fresh deep hymenal laceration at 5 o'clock position with edges bleeding; abrasion measuring 1.3 cm. on the left breast; and contusion measuring 1.5 cm. on the right hand of AAA.[5]

Evidence of the Defense

The accused denied the accusation.

The accused claimed that he and AAA had first met on January 6, 2006, and became friends; that their friendship had blossomed into romance, with them becoming lovers after two months; that they had gone out once on a date on March 6, 2006, and had agreed to go out on a date again on March 14, 2006; that on the latter date, they had met at Augusto San Francisco Street, Sta. Ana Manila, and had proceeded on board a passenger jeepney to the Jollibee restaurant on Rizal Avenue; that at the Jollibee

[5] *Id.* at 70.

restaurant, he ordered food and asked her whether they would push through with their plan to go to a motel; that after she assented, they walked together to the motel, where a room boy led them to their designated room, which had a doorknob that could be locked from the inside; that once they entered the room, she went to the restroom and later came out wearing only a towel; that she told him that she loved him, and they started kissing each other; that she took off the towel, while he undressed; that she did not resist when he went on top of her and inserted his penis in her vagina, but he stopped when she told him that she was not yet ready; that they then got dressed, left the motel together, and boarded a passenger jeepney; that after parting ways, she called him through his cellphone and asked if they could see each other again; and that once he arrived at the meeting place, a police officer later identified as German arrested and handcuffed him.

Also testifying for the Defense was the mother of the accused. She asserted that AAA was already her son's girlfriend prior to the incident; that when she went to the police headquarters upon learning of her son's arrest, she saw AAA but the latter asked her to talk to German instead; that German told her: *Wala nang madami pang usapan*, *basta mangako ka sa akin na magbibigay ka ng ₱200,000.00*; and that she asked AAA about what had really happened, but the latter refused to answer her query.[6]

Ruling of the RTC

As stated, the RTC found the accused guilty beyond reasonable doubt of rape, decreeing:

WHEREFORE, premises considered, the Court finds accused **CARLITO CLARO Y MAHINAY GUILTY** beyond reasonable doubt of the crime charged and is hereby sentenced to suffer the penalty of reclusion perpetua and ordered to pay the victim, AAA the total amount of ₱50,000.00 as civil indemnity, and ₱50,000.00 as moral damages. With costs.

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[6] *Rollo,* p. 11.

It appearing that accused is detained, the period of his detention shall be credited in the service of his sentence.

SO ORDERED.[7]

Decision of the CA

On appeal, the CA affirmed the conviction, disposing:

WHEREFORE, in view of the foregoing, the instant APPEAL is **DENIED.** Accordingly, the Decision dated November 17, 2008 rendered by the Regional Trial Court of Manila, in Criminal Case No. 06-242729 convicting accused-appellant of the crime of rape is hereby **AFFIRMED.**

SO ORDERED.[8]

The CA regarded AAA's testimony as credible; and ruled that the presence of bruises and abrasions on the body of AAA proved that she had been subjected to bodily harm before he accomplished his lustful desires. It observed that the fact that the parties had gone home together after the incident was sufficiently explained by AAA's statement that she had no choice but to go with him because she did not know her way back.

Issue

Did the RTC and the CA correctly find and pronounce the accused guilty of rape beyond reasonable doubt?

Ruling of the Court

The Court acquits the accused on the ground of reasonable doubt.

It is noticeable that the versions of AAA and the accused ultimately contradicted each other on whether rape or consensual sex had transpired between them. Their contradictions notwithstanding, the circumstances – whether based on her recollection or on his – indicated that she had willingly met

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[7] CA *rollo,* p. 74.

[8] *Rollo,* p. 20.

with him on March 14, 2006 in order to go on a lovers' date. Their meeting on Augusto San Francisco Street in Sta. Ana, Manila, and their going together by jeepney to Rizal Avenue, where they entered the Jollibee restaurant to share the meal were undoubtedly by their prior agreement. It was while they were in the restaurant when they discussed checking in at the Aroma Motel, but once she assented to their checking in the Aroma motel, they walked together towards the motel, and entered together.

The sweetheart defense is not usually regarded with favor in the absence of strong corroboration.[9] This is because the mere fact that the accused and the victim were lovers should not exculpate him from criminal liability for rape. In *People v. Orquina*,[10] the Court observed that an allegation of a "love relationship" between the parties, even if found to be true, did not eliminate the use of force to consummate the crime because the gravamen of rape is the carnal knowledge of a woman *against her will* and *without her consent*. As declared in *People v. Gecomo*:[11]

> It should be borne in mind that love is not a license for carnal intercourse through force or intimidation. Even granting that appellant and complainant were really sweethearts, that fact alone would not negate the commission of rape. A sweetheart cannot be forced to have sex against her will. From a mere fiancee, definitely a man cannot demand sexual submission and, worse, employ violence upon her on a mere justification of love. A man can even be convicted for the rape of his common-law wife.

It is a time-honored tenet that the appreciation and assessment by the trial judge of the credibility of witnesses are accorded respect primarily because the trial judge personally observed the conduct and demeanor of the witnesses as to enable him or her to determine whether they were telling the truth or merely fabricating it.[12] Another tenet of long standing is that the factual

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[9] *People v. Toriaga,* G.R. No. 177145, February 9, 2011, 642 SCRA 515, 521.

[10] G.R. No. 143383, October 8, 2002, 390 SCRA 510, 514.

[11] G.R. Nos. 115035-36, February 23, 1996, 254 SCRA 82, 110.

[12] *People v. Abrencillo,* G.R. No. 183100, November 28, 2012, 686 SCRA 592, 597.

findings of the CA affirming those of the trial judge are generally binding upon the Court, which is not a trier of facts.[13] Based on these tenets, it would be easy to simply affirm the conviction of the accused herein especially considering that both the RTC and the CA regarded AAA as a credible witness whose testimony was worthy of belief.

Yet, it is not fair and just to quickly reject the defense of consensual sexual intercourse interposed by the accused. To be noted first and foremost is that he and AAA were adults capable of consenting to the sexual intercourse. The established circumstances – their having agreed to go on a lovers' date; their travelling together a long way from their meeting place on board the jeepney; their alighting on Rizal Avenue to take a meal together; their walking together to the motel, and checking in together at the motel without the complainant manifesting resistance; and their entering the designated room without protest from her – indicated beyond all doubt that they had consented to culminate their lovers' date in bed inside the motel. Although she claimed that he had held her by the hand and pulled her upstairs, there is no evidence showing that she resisted in that whole time, or exhibited a reluctance to enter the motel with him. Instead, she appeared to have walked with him towards the motel, and to have entered it without hesitation. What she did not do was eloquent proof of her consent.

Noting the medico-legal findings of bruises and abrasions on AAA, the CA concluded that she had been subjected to some "bodily harm" by the accused to force himself on her, to wit:

> x x x In the case before Us, We are convinced that the element of force was present. This is shown by the fact that the accused-appellant held private complainant's hands to the point of dragging her up the stairs of the motel, and by the fact that he pushed private complainant to the bed when the latter tried to escape. Moreover, as We have mentioned above, the presence of bruises and abrasions on private complainant's body evince the fact that latter was subjected to bodily

[13] *People v. Taguilid,* G.R. No. 181544, April 11, 2012, 669 SCRA 341, 350.

harm before accused-appellant succeeded in having carnal knowledge with her.[14]

That the medico-legal examination of March 14, 2006 turned up with the findings of abrasions on AAA's left breast and contusions on her right hand did not necessarily mean that the accused had applied force in the context of forcing her to have sex with him. The conclusion of the CA was, therefore, too sweeping, for it inexplicably ignored the probability of consensuality between the parties. Such findings did not justify the full rejection of the demonstrable consensuality of their sexual intercourse. Moreover, the mere presence of abrasions and contusions on her did not preclude the giving of her consent to the sexual intercourse, for abrasions and contusions *could also be suffered* during voluntary submission of the partners to each other's lust. Such possibility calls for us to open our minds to the conclusion that the sexual intercourse resulted from consensuality between them.

In every criminal case, the accused is entitled to acquittal unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind.[15]

In the face of all the foregoing, we have reasonable doubt of the guilt of the accused for rape. Reasonable doubt –

> x x x is not mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. **It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in such a condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.** The burden of proof is upon the prosecutor. All the presumptions of law independent of evidence are in favor of innocence;

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[14] *Rollo,* p. 18.

[15] Section 2, Rule 133 of the Rules of Court.

and every person is presumed to be innocent until he is proved guilty. **If upon such proof there is reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. For it is not sufficient to establish a probability, though a strong one arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary; but the evidence must establish the truth of the fact to a reasonable and moral certainty; a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. This we take to be proof beyond reasonable doubt; because if the law, which mostly depends upon considerations of a moral nature, should go further than this, and require absolute certainty, it would exclude circumstantial evidence altogether**.[16]

The requirement of establishing the guilt of the accused in every criminal proceeding beyond reasonable doubt has a long history that even pre-dates our Constitutions. As summed up by jurisprudence of American origin:

The requirement that guilt of a criminal charge be established by proof beyond a reasonable doubt dates at least from our early years as a Nation. The 'demand for a higher degree of persuasion in criminal cases was recurrently expressed from ancient times, (though) its crystallization into the formula 'beyond a reasonable doubt' seems to have occurred as late as 1798. It is now accepted in common law jurisdictions as the measure of persuasion by which the prosecution must convince the trier of all the essential elements of guilt.' C. McCormick, Evidence 321, pp. 681-682 (1954); see also 9 J. Wigmore, Evidence, 2497 (3d ed. 1940). Although virtually unanimous adherence to the reasonable-doubt standard in common-law jurisdictions may not conclusively establish it as a requirement of due process, such adherence does 'reflect a profound judgment about the way in which law should be enforced and justice administered.' Duncan v. Louisiana, 391 U.S. 145, 155 , 1451 (1968).

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[16] Shaw, C. J., in *Commonwealth v. Webster*, 5 Cush. (Mass.) 320, 52 Am. Dec. 711; cited in *Schmidt v. Ins. Co*., 1 Gray (Mass.) 534; *Bethell v. Moore*, 19 N. C. 311; *State v. Goldsborough*, Houst. Cr. Rep. (Del.) 316 (Bold underscoring is supplied for emphasis).

Expressions in many opinions of this Court indicate that it has long been assumed that proof of a criminal charge beyond a reasonable doubt is constitutionally required. See, for example, Miles v. United States, 103 U.S. 304, 312 (1881); Davis v. United States, 160 U.S. 469, 488 , 358 (1895); Holt v. United States, 218 U.S. 245, 253, (1910); Wilson v. United States, 232 U.S. 563, 569_-570, 349, 350 (1914); Brinegar v. United States, 338 U.S. 160, 174, 1310 (1949); Leland v. Oregon, 343 U.S. 790, 795 , 1005, 1006 (1952); Holland v. United States, 348 U.S. 121, 138 , 136, 137 (1954); Speiser v. Randall, 357 U.S. 513 , 525-526, 1342 (1958). Cf. Coffin v. United States, 156 U.S. 432 (1895). **Mr. Justice Frankfurter stated that '(i)t the duty of the Government to establish ... guilt beyond a reasonable doubt. This notion-basic in our law and rightly one of the boasts of a free society-is a requirement and a safeguard of due process of law in the historic, procedural content of 'due process."** Leland v. Oregon, supra, 343 U.S., at 802 -803 (dissenting opinion). In a similar vein, the Court said in Brinegar v. United States, supra, 338 U.S., at 174 , that **'(g)uilt in a criminal case must be proved beyond a reasonable doubt and by evidence confined to that which long experience in the common-law tradition, to some extent embodied in the Constitution, has crystallized into rules of evidence consistent with that standard. These rules are historically grounded rights of our system, developed to safeguard men from dubious and unjust convictions, with resulting forfeitures of life, liberty and property**.' Davis v. United States, supra, 160 U.S., at 488 stated that the requirement is implicit in 'constitutions ... (which) recognize the fundamental principles that are deemed essential for the protection of life and liberty.' In Davis a murder conviction was reversed because the trial judge instructed the jury that it was their duty to convict when the evidence was equally balanced regarding the sanity of the accused. This Court said: 'On the contrary, he is entitled to an acquittal of the specific crime charged, if upon all the evidence, there is reasonable doubt whether he was capable in law of committing crime. ... No man should be deprived of his life under the forms of law unless the jurors who try him are able, upon their consciences, to say that the evidence before them...is sufficient to show beyond a reasonable doubt the existence of every fact necessary to constitute the crime charged.' Id., at 484, 493, 360.

The reasonable-doubt standard plays a vital role in the American scheme of criminal procedure. It is a prime instrument for reducing the risk of convictions resting on factual error. The standard provides concrete substance for the presumption of innocence-that bedrock 'axiomatic and elementary' principle whose 'enforcement lies at the foundation of the administration of our criminal law.' Coffin v. United States, supra, 156 U.S., at 453. As the dissenters in the New York Court of Appeals observed, and we agree, 'a person accused of a crime...would be at a severe disadvantage, a disadvantage amounting to a lack of fundamental fairness, if he could be adjudged guilty and imprisoned for years on the strength of the same evidence as would suffice in a civil case.' 24 N.Y.2d, at 205, 299 N.Y.S.2d, at 422, 247 N.E.2d, at 259.

The requirement of proof beyond a reasonable doubt has this vital role in our criminal procedure for cogent reasons. The accused during a criminal prosecution has at stake interest of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction. Accordingly, a society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt. As we said in Speiser v. Randall, supra, 357 U.S., at 525 -526: 'There is always in litigation a margin of error, representing error in factfinding, which both parties must take into account. Where one party has at stake an interest of transcending value-as a criminal defendant his liberty-this margin of error is reduced as to him by the process of placing on the other party the burden of ... persuading the factfinder at the conclusion of the trial of his guilt beyond a reasonable doubt. **Due process commands that no man shall lose his liberty unless the Government has borne the burden of ...convincing the factfinder of his guilt.' To this end, the reasonable-doubt standard is indispensable, for it 'impresses on the trier of fact the necessity of reaching a subjective state of certitude of the facts in issue.'** Dorsen & Rezneck, In Re Gault and the Future of Juvenile Law, 1 Family Law Quarterly, No. 4, pp. 1, 26 (1967).

Moreover, **use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law. It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned.**

It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty.

Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.[17]

Requiring proof of guilt beyond reasonable doubt necessarily means that mere suspicion of the guilt of the accused, *no matter how strong*, should not sway judgment against him. It further means that the courts should duly consider every evidence favoring him, and that in the process the courts should persistently insist that accusation is not synonymous with guilt; hence, every circumstance favoring his innocence should be fully taken into account.[18] That is what we must be do herein, for he is entitled to nothing less.

Without the proof of his guilt being beyond reasonable doubt, therefore, the presumption of innocence in favor of the accused herein was not overcome. His acquittal should follow, for, as we have emphatically reminded in *Patula v. People*:[19]

x x x in all criminal prosecutions, the Prosecution bears the burden to establish the guilt of the accused beyond reasonable doubt. In discharging this burden, the Prosecution's duty is to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein. **The Prosecution must**

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[17] *In Re Winship*, 397 U.S. 358, 362-365 (Bold underscoring supplied for emphasis).

[18] *People v. Mejia*, G.R. Nos. 118940-41 and G.R. No. 119407, July 7, 1997, 275 SCRA 127, 155.

[19] G.R. No. 164457, April 11, 2012, 669 SCRA 135.

further prove the participation of the accused in the commission of the offense. In doing all these, the Prosecution must rely on the strength of its own evidence, and not anchor its success upon the weakness of the evidence of the accused. The burden of proof placed on the Prosecution arises from the presumption of innocence in favor of the accused that no less than the Constitution has guaranteed. Conversely, as to his innocence, the accused has no burden of proof, that he must then be acquitted and set free should the Prosecution not overcome the presumption of innocence in his favor. In other words, the weakness of the defense put up by the accused is inconsequential in the proceedings for as long as the Prosecution has not discharged its burden of proof in establishing the commission of the crime charged and in identifying the accused as the malefactor responsible for it.[20]

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision of the Court of Appeals promulgated on March 24, 2011 affirming the conviction for rape of **CARLITO CLARO *y* MAHINAY** under the judgment rendered by the Regional Trial Court, Branch 21, in Manila; **ACQUITS CARLITO CLARO *y* MAHINAY** for failure to prove his guilt beyond reasonable doubt; **ORDERS** his immediate release from the National Penitentiary unless there are other lawful causes warranting his continuing confinement thereat; and **DIRECTS** the Director of the Bureau of Corrections to implement the release of **CARLITO CLARO *y* MAHINAY** in accordance with this decision, and to report on his compliance within 10 days from receipt.

No pronouncement on costs of suit.

SO ORDERED.

Carpio,* *Velasco, Jr.(Chairperson), Reyes,* and *Tijam, JJ.,* concur.

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[20] Bold underscoring supplied for emphasis.

* Vice Associate Justice Francis H. Jardeleza per Raffle dated February 13, 2017.

THIRD DIVISION

[G.R. No. 200612. April 5, 2017]

RAFAEL C. UY (CABANGBANG STORE), *petitioner, vs.* **ESTATE OF VIPA FERNANDEZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; REVISED RULES ON SUMMARY PROCEDURE; AFFIRMATIVE AND NEGATIVE DEFENSES NOT PLEADED IN THE ANSWER ARE DEEMED WAIVED; RULE APPLIED IN CASE AT BAR.— Unlawful detainer cases are covered by the Rules on Summary Procedure. Section 5 of the 1991 Revised Rules on Summary Procedure provides that affirmative and negative defenses not pleaded in the answer shall be deemed waived, except lack of jurisdiction over the subject matter. Rafael failed to plead in the answer he filed with the MTCC that Grace Joy has no authority to represent the Estate of Vipa. Neither did he raise therein the lack of barangay conciliation between the parties herein prior to the filing of the complaint for unlawful detainer. Accordingly, the foregoing defenses are already deemed waived.

2. ID.; ID.; REQUIREMENT OF SUBMITTING THE DISPUTE TO THE BARANGAY FOR CONCILIATION PRIOR TO THE FILING OF THE COMPLAINT FOR UNLAWFUL DETAINER DOES NOT APPLY TO A JURIDICAL ENTITY.— [T]here was no need to refer the dispute between the parties herein to the barangay for conciliation pursuant to the *Katarungang Pambarangay* Law. It bears stressing that only individuals may be parties to barangay conciliation proceedings either as complainants or respondents. Complaints by or against corporations, partnerships or other juridical entities may not be filed with, received or acted upon by the barangay for conciliation. The Estate of Vipa, which is the complainant below, is a juridical entity that has a personality, which is separate and distinct from that of Grace Joy. Thus, there is no necessity to bring the dispute to the barangay for conciliation prior to filing of the complaint for unlawful detainer with the MTCC.

3. ID.; APPEALS; ISSUES; BEFORE A PARTY MAY BE BARRED FROM RAISING AN ISSUE FOR THE FIRST TIME ON APPEAL, IT IS IMPERATIVE THAT THE ISSUE COULD HAVE BEEN RAISED DURING THE TRIAL; WHERE THE SALE OF THE ONE-HALF UNDIVIDED PORTION OF THE SUBJECT PROPERTY TOOK PLACE ONLY TWO YEARS AFTER THE UNLAWFUL DETAINER CASE WAS FILED, A PARTY CANNOT BE BARRED FROM RAISING SUCH ISSUE FOR THE FIRST TIME ON APPEAL.— It is true that fair play, justice, and due process dictate that parties should not raise for the first time on appeal issues that they could have raised but never did during trial. However, before a party may be barred from raising an issue for the first time on appeal, it is imperative that the issue could have been raised during the trial. What escaped the appellate court's attention is that the sale of the one-half undivided share in the subject property to Rafael was consummated only on December 29, 2005, more than two years after Rafael filed with the MTCC his answer to the complaint for unlawful detainer on July 18, 2003. Obviously, Rafael could not have raised his acquisition of Levi's share in the subject property as an affirmative defense in the answer he filed with the MTCC.

4. CIVIL LAW; FAMILY CODE; ARTICLE 130 THEREOF IS APPLICABLE TO CONJUGAL PARTNERSHIP OF GAINS ESTABLISHED BETWEEN THE SPOUSES PRIOR TO THE EFFECTIVITY OF THE FAMILY CODE.— When Vipa died on March 5, 1994, the conjugal partnership was automatically terminated. Under Article 130 of the Family Code, the conjugal partnership property, upon its dissolution due to the death of either spouse, should be liquidated either in the same proceeding for the settlement of the estate of the deceased or, in the absence thereof, by the surviving spouse within one year from the death of the deceased spouse. That absent any liquidation, any disposition or encumbrance of the conjugal partnership property is void. x x x Article 130 of the Family Code is applicable to conjugal partnership of gains already established between the spouses prior to the effectivity of the Family Code pursuant to Article 105 thereof[.]

5. ID.; ID.; ID.; THE DISPOSITION OF CONJUGAL PARTNERSHIP PROPERTIES BY THE SURVIVING SPOUSE IS NOT NECESSARILY VOID

NOTWITHSTANDING THE ABSENCE OF LIQUIDATION; RIGHTS OF THE SURVIVING SPOUSE AS WELL AS THE HEIRS OF THE DECEASED SPOUSE TO THE CONJUGAL PARTNERSHIP PROPERTIES, DISCUSSED; THE BUYER OF THE UNDIVIDED SHARE BECAME A CO-OWNER OF THE SUBJECT PROPERTY WHO HAS THE RIGHT TO POSSESS THE SAME.— Rafael bought Levi's one-half share in the subject property in consideration of ₱500,000.00 as evidenced by the Deed of Sale dated December 29, 2005. At that time, the conjugal partnership properties of Levi and Vipa were not yet liquidated. However, such disposition, notwithstanding the absence of liquidation of the conjugal partnership properties, is not necessarily void. It bears stressing that under the regime of conjugal partnership of gains, the husband and wife are co-owners of all the property of the conjugal partnership. Thus, upon the termination of the conjugal partnership of gains due to the death of either spouse, the surviving spouse has an actual and vested one-half undivided share of the properties, which does not consist of determinate and segregated properties until liquidation and partition of the conjugal partnership. With respect, however, to the deceased spouse's share in the conjugal partnership properties, an implied ordinary co-ownership ensues among the surviving spouse and the other heirs of the deceased. Thus, upon Vipa's death, one half of the subject property was automatically reserved in favor of the surviving spouse, Levi, as his share in the conjugal partnership. The other half, which is Vipa's share, was transmitted to Vipa's heirs – Grace Joy, Jill Frances, and her husband Levi, who is entitled to the same share as that of a legitimate child. The ensuing implied co-ownership is governed by Article 493 of the Civil Code x x x [.] Although Levi became a co-owner of the conjugal partnership properties with Grace Joy and Jill Frances, he could not yet assert or claim title to any specific portion thereof without an actual partition of the property being first done either by agreement or by judicial decree. Before the partition of a land or thing held in common, no individual or co-owner can claim title to any definite portion thereof. All that the co-owner has is an ideal or abstract quota or proportionate share in the entire land or thing. Nevertheless, a co-owner could sell his undivided share; hence, Levi had the right to freely sell and dispose of his undivided interest. Thus, the sale by Levi of his one-half undivided share in the subject property

was not necessarily void, for his right as a co-owner thereof was effectively transferred, making the buyer, Rafael, a co-owner of the subject property. It must be stressed that the binding force of a contract must be recognized as far as it is legally possible to do so (*quando res non valet ut ago, valeat quantum valere potest*). However, Rafael became a co-owner of the subject property only on December 29, 2005 – the time when Levi sold his one-half undivided share over the subject property to the former. Thus, from December 29, 2005 Rafael, as a co-owner, has the right to possess the subject property as an incident of ownership.

6. ID.; LEASE; WHILE PETITIONER CAN NO LONGER BE DIRECTED TO VACATE THE SUBJECT PROPERTY SINCE HE IS ALREADY A CO-OWNER, HE IS STILL BOUND TO PAY THE UNPAID RENTALS AND REASONABLE RENT FOR THE USE AND POSSESSION OF THE PROPERTY, BOTH WITH INTEREST, FOR THE PERIOD WHEN HE WAS A MERE LESSEE.— [P]rior to his acquisition of Levi's one-half undivided share, Rafael was a mere lessee of the subject property and is thus obliged to pay the rent for his possession thereof. Accordingly, Rafael could no longer be directed to vacate the subject property since he is already a co-owner thereof. Nevertheless, Rafael is still bound to pay the unpaid rentals from June 1998 until April 2003 in the amount of ₱271,150.00. In *Nacar v. Gallery Frames, et al.*, the Court pointed out that pursuant to Resolution No. 796 of the Bangko Sentral ng Pilipinas Monetary Board, the interest rate of loans or forbearance of money, in the absence of stipulation shall be six percent (6%) effective only from July 1, 2013. Thus, prior to July 1, 2013, the rate of interest on loans or forbearance of money, in the absence of stipulation, is still 12%. Accordingly, the amount of ₱271,150.00, representing the unpaid rentals shall earn interest at the rates of 12% *per annum* from the date of the last demand on May 3, 2003 until June 30, 2013 and 6% *per annum* from July 1, 2013 until fully paid. Further, Rafael is likewise bound to pay reasonable rent for the use and occupancy of the subject property from May 2003 until December 28, 2005 at the rate of ₱3,000.00 per month with interest at the rate of 12% *per annum* from the date of the last demand, *i.e.*, the filing of the complaint with

the MTCC on June 12, 2003, until June 30, 2013 and 6% *per annum* from July 1, 2013 until fully paid.

7. ID.; DAMAGES; AWARD OF ATTORNEY'S FEES, PROPER.— The award of attorney's fees of ₱20,000.00 is likewise proper. Attorney's fees can be awarded in the cases enumerated in Article 2208 of the Civil Code, specifically: Article 2208. x x x (2) Where the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest[.] Certainly, because of Rafael's unjustified refusal to pay the rents due on the lease of the subject property, the Estate of Vipa was put to unnecessary expense and trouble to protect its interest under paragraph (2), Article 2208 of the Civil Code. In unlawful detainer cases, where attorney's fees are awarded, the same shall not exceed ₱20,000.00.

APPEARANCES OF COUNSEL

Rene C. Estocapio for petitioner.
Reynaldo B. Tatoy for respondent.

D E C I S I O N

REYES, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated November 26, 2010 and Resolution[3] dated January 24, 2012 issued by the Court of Appeals (CA) in CA-G.R. SP No. 04481.

Facts

Vipa Fernandez Lahaylahay (Vipa) is the registered owner of a parcel of land situated in Lopez Jaena Street, Jaro, Iloilo

[1] *Rollo*, pp. 14-41.

[2] Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Edgardo L. Delos Santos and Eduardo B. Peralta, Jr. concurring; *id.* at 48-54.

[3] *Id.* at 45-46.

City covered by Transfer Certificate of Title No. T-26576 (subject property).[4] Vipa and her husband, Levi Lahaylahay (Levi), have two children – Grace Joy Somosierra (Grace Joy) and Jill Frances Lahaylahay (Jill Frances).[5]

Sometime in 1990, a contract of lease was executed between Vipa and Rafael Uy (Rafael) over the subject property and the improvements thereon, pursuant to which, Rafael bound himself to pay Vipa, as consideration for the lease of the property, the amount of ₱3,000.00 *per* month, with a provision for a 10% increase every year thereafter.[6]

On March 5, 1994, Vipa died leaving no will or testament whatsoever. Grace Joy became the *de facto* administrator of the estate of Vipa. After Vipa's death, Levi lived in Aklan.[7]

In June 1998, Rafael stopped paying the monthly rents.[8] Consequently, on June 12, 2003, the Estate of Vipa, through Grace Joy, filed a complaint[9] for unlawful detainer with the Municipal Trial Court in Cities (MTCC) of Iloilo City against Rafael. It was alleged therein that, as of June 1998, Rafael was already bound to pay rent at the amount of ₱3,300.00 per month and that his last payment was made in May 1998. Accordingly, at the time of the filing of the Complaint, Rafael's unpaid rents amounted to ₱271,150.00.[10] The Estate of Vipa claimed that despite repeated demands, Rafael refused to pay the rents due.[11]

In his Answer,[12] Rafael denied that he refused to pay the rent for the lease of the subject property. He claimed that

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[4] *Id*. at 134.

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

[6] *Id*. at 49.

[7] *Id*. at 18.

[8] *Id*. at 49.

[9] *Id*. at 131-132.

[10] *Id*. at 131.

[11] *Id*. at 132.

[12] *Id*. at 124-127.

sometime in June 1998 Patria Fernandez-Cuenca (Patria), Vipa's sister, demanded for the payment of the rents, claiming that she is the rightful heir of Vipa.[13] Since he had no idea on who is entitled to receive the rent for the subject property, he deposited the amount of ₱10,000.00 with the Office of the Clerk of Court of the Regional Trial Court (RTC) of Iloilo City on November 20, 1998 and that Grace Joy was informed of such consignation.[14] He claimed that a case for the settlement of the Estate of Vipa was instituted by Patria with the RTC, which was docketed as Special Proceeding No. 6910. He averred that he is willing to pay the rent on the leased property to the rightful heirs of Vipa and that he made another consignation with the RTC in the amount of ₱6,000.00.[15]

On June 12, 2008, the MTCC rendered a Decision,[16] the decretal portion of which reads:

> WHEREFORE, in the light of the foregoing ratiocination, judgment is hereby rendered in favor of the [Estate of Vipa] and against [Rafael], ordering the latter, to wit:
>
> 1. to vacate the premises subject of this case and covered by TCT No. T-26576 and to peacefully turn over the possession of the same to the [Estate of Vipa];
>
> 2. to pay the [Estate of Vipa] the amount of Php271,150.00 as payment for the unpaid rentals with 12% interest per annum from the last demand on May 3, 2003 until the whole amount is paid;
>
> 3. to pay the [Estate of Vipa] the amount of Php3,000.00 per month with 12% interest per annum for the use and occupancy of the premises computed from the date of the filing of this case on June 12, 2003 until fully paid;

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[13] *Id*. at 124.

[14] *Id*. at 124-125.

[15] *Id*. at 125.

[16] Rendered by Presiding Judge Marie Yvette D. Go; *id*. at 115-123.

4. to pay the [Estate of Vipa] attorney's fees in the amount of Php20,000.00; [and]

5. to pay the costs of suit.

SO ORDERED.[17]

The MTCC found that after Vipa's death in 1994 until 1998, Rafael was paying the rent for the lease of the subject property to Grace Joy.[18] That the real reason why Patria claimed to be the heir of Vipa is because she owed Rafael money which she could not pay. Patria then charged the debt she owes to Rafael from the monthly rent of the subject property, an arrangement that Rafael took advantage to avoid paying Grace Joy the monthly rents. The MTCC further opined that the consignations made by Rafael in the total amount of ₱16,000.00 is not valid since there was no prior tender of payment.[19]

On appeal, the RTC, in its Decision[20] dated April 15, 2009, reversed the MTCC's Decision dated June 12, 2008 and, thus, dismissed the complaint for unlawful detainer filed by the Estate of Vipa. Thus:

WHEREFORE, premises considered, the Decision appealed from is REVERSED and SET ASIDE; and the herein complaint is hereby DISMISSED for lack of merit; and further DISMISSING [Rafael's] counterclaim for failure to substantiate the same.

SO ORDERED.[21]

The RTC opined that Grace Joy was actually the plaintiff in the case and not the Estate of Vipa. It then pointed out that Grace Joy

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[17] *Id*. at 123.

[18] *Id*. at 119.

[19] *Id*. at 120.

[20] Rendered by Judge Antonio M. Natino; *id*. at 101-114.

[21] *Id*. at 114.

failed to bring the dispute to the barangay for conciliation prior to filing the complaint for unlawful detainer.[22]

The RTC further held that the MTCC erred in including the entire subject property as part of the Estate of Vipa. The RTC explained that the subject property was acquired by Vipa during the subsistence of her marriage with Levi and, as such, is part of their conjugal properties. That after Vipa's death, the conjugal partnership was terminated, entitling Levi to one-half of the property.[23] The RTC then pointed out that Levi sold his share in the subject property to Rafael, as evidenced by a Deed of Sale[24] dated December 29, 2005.[25] Accordingly, the RTC ruled that Rafael, as co-owner of the subject property, having bought Levi's one-half share thereof, had the right to possess the same.[26]

The Estate of Vipa sought a reconsideration[27] of the Decision dated April 15, 2009, but it was denied by the RTC in its Order dated July 28, 2009.[28]

The Estate of Vipa then filed a Petition for Review[29] with the CA. On November 26, 2010, the CA rendered a Decision,[30] which declared:

WHEREFORE, in view of all the foregoing, the instant petition for review is GRANTED and the April 15, 2009 Decision of the court a quo in Civil Case No. 08-29842 is hereby REVERSED and SET ASIDE. Accordingly, the June 12, 2008 Decision of the Municipal Trial Court, Branch 4, Iloilo City, in Civil Case No. 03-208 is hereby REINSTATED.

SO ORDERED.[31]

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[22] *Id.* at 107.
[23] *Id*. at 112-113.
[24] *Id*. at 137-138.
[25] *Id*. at 113.
[26] *Id*. at 114.
[27] *Id*. at 95-100.
[28] *Id*. at 51.
[29] *Id*. at 78-94.
[30] *Id*. at 48-54.
[31] *Id*. at 54.

The CA held that there was no necessity to bring the dispute before the barangay for conciliation since the Estate of Vipa, being a juridical person, cannot be impleaded to a barangay conciliation proceeding. The CA likewise pointed out that any allegations against Grace Joy's authority to represent the Estate of Vipa had been laid to rest when she was appointed as administrator of the Estate of Vipa in Special Proceedings No. 6910 pending before the RTC.[32]

Further, the CA held that Rafael raised the issue of ownership of the subject property, *i.e.*, Levi's sale of his one-half share in the subject property to Rafael, only for the first time in his appeal with the RTC. Accordingly, it was error on the part of the RTC to have resolved the issue of ownership of the subject property.[33] Furthermore, the CA agreed with the MTCC that Rafael's consignation of the rent to the RTC is ineffective. It ruled that Rafael made the consignation only twice and the amount consigned was patently insignificant compared to the amount of rent due.[34]

Rafael's motion for reconsideration[35] was denied by the CA in its Resolution[36] dated January 24, 2012.

Hence, the instant petition.

Rafael maintains that Grace Joy has no authority to represent the Estate of Vipa and, when she filed the complaint for unlawful detainer with the MTCC, she did so in her personal capacity. Thus, Rafael claims that the dispute should have been brought to the barangay for conciliation before the complaint was filed in the MTCC.[37] He further claims that the CA erred in reversing

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[32] *Id*. at 52.

[33] *Id*. at 53.

[34] *Id*.

[35] *Id*. at 55-64.

[36] *Id*. at 45-46.

[37] *Id*. at 24-25.

the RTC's ruling on the issue of ownership of the subject property. He insists that he already purchased Levi's one-half share in the subject property.[38]

On the other hand, the Estate of Vipa, in its Comment,[39] avers that the supposed lack of authority of Grace Joy to file the complaint for unlawful detainer and the ownership of the subject property were never raised in the proceedings before the MTCC and, hence, could not be passed upon by the RTC in the appellate proceedings. In any case, it pointed out that the RTC's Decision[40] dated October 28, 2005 in Special Proceedings No. 6910, which appointed Grace Joy as the administrator of the intestate estate of Vipa, recognized that the latter and Jill Frances are legitimate children of Vipa and Levi.

Issue

Essentially, the issue set forth for the Court's resolution is whether the CA erred in reversing the RTC's Decision dated April 15, 2009.

Ruling of the Court

The petition is partly meritorious.

Rafael's claim that the complaint below should have been dismissed since Grace Joy has no authority to represent the Estate of Vipa and that there was lack of prior barangay conciliation is untenable. Unlawful detainer cases are covered by the Rules on Summary Procedure.[41] Section 5 of the 1991 Revised Rules on Summary Procedure provides that affirmative and negative defenses not pleaded in the answer shall be deemed waived, except lack of jurisdiction over the subject matter.

Rafael failed to plead in the answer he filed with the MTCC that Grace Joy has no authority to represent the Estate of Vipa.

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[38] *Id*. at 27-33.

[39] *Id*. at 143-145.

[40] *Id*. at 146-150.

[41] The 1991 Revised Rules on Summary Procedure, Section 1(A)(1).

Neither did he raise therein the lack of barangay conciliation between the parties herein prior to the filing of the complaint for unlawful detainer. Accordingly, the foregoing defenses are already deemed waived.

In any case, the issue of the supposed lack of authority of Grace Joy to represent the Estate of Vipa had already been rendered moot with the RTC's appointment of Grace Joy as the administrator of the Estate of Vipa in Special Proceedings No. 6910.

Also, there was no need to refer the dispute between the parties herein to the barangay for conciliation pursuant to the *Katarungang Pambarangay* Law.[42] It bears stressing that only individuals may be parties to barangay conciliation proceedings either as complainants or respondents. Complaints by or against corporations, partnerships or other juridical entities may not be filed with, received or acted upon by the barangay for conciliation.[43] The Estate of Vipa, which is the complainant below, is a juridical entity that has a personality, which is separate and distinct from that of Grace Joy.[44] Thus, there is no necessity to bring the dispute to the barangay for conciliation prior to filing of the complaint for unlawful detainer with the MTCC.

The CA, nevertheless, erred in hastily dismissing Rafael's allegation as regards the ownership of the subject property. In disregarding Rafael's claim that he owns Levi's one-half undivided share in the subject property, the CA ruled that the said issue was raised for the first time on appeal and should thus not have been considered by the RTC, *viz.*:

On the second issue, the records show that [Rafael] raised the issue of ownership only for the first time on appeal; hence, the [RTC]

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[42] Sections 399 to 422, Chapter 7, Title One, Book III and Section 515, Title One, Book IV of Republic Act No. 7160 (The Local Government Code).

[43] *Universal Robina Sugar Milling Corporation v. Heirs of Teves*, 438 Phil. 26, 41 (2002), citing Section 1, Rule VI of the *Katarungang Pambarangay* Rules implementing the *Katarungang Pambarangay* Law.

[44] See *Limjoco v. Intestate of Fragante*, 80 Phil. 776 (1948).

erred in deciding the appeal before it on the findings that part of the subject premises is owned by petitioners, allegedly having bought the same from [Levi], the husband of [Vipa].

The Court is not unmindful that in forcible entry and unlawful detainer cases, the MTC may rule on the issue [of] ownership in order to determine the issue of possession. However, the issue of ownership must be raised by the defendant on the earliest opportunity; otherwise, it is already deemed waived. Moreover, the instant case was covered by the Rules on Summary Procedure, which expressly provide that affirmative and negative defenses not pleaded therein shall be deemed waived, except for lack of jurisdiction over the subject matter. Thus, the [RTC] erred in resolving the issue of ownership for the first time on appeal.[45] (Citations omitted)

It is true that fair play, justice, and due process dictate that parties should not raise for the first time on appeal issues that they could have raised but never did during trial. However, before a party may be barred from raising an issue for the first time on appeal, it is imperative that the issue could have been raised during the trial.[46] What escaped the appellate court's attention is that the sale of the one-half undivided share in the subject property to Rafael was consummated only on December 29, 2005, more than two years after Rafael filed with the MTCC his answer to the complaint for unlawful detainer on July 18, 2003.[47] Obviously, Rafael could not have raised his acquisition of Levi's share in the subject property as an affirmative defense in the answer he filed with the MTCC.

Moreover, Rafael's ownership of the one-half undivided share in the subject property would necessarily affect the property relations between the parties herein. Thus, the CA should have exerted efforts to resolve the said issue instead of dismissing the same on the flimsy ground that it was not raised during the proceedings before the MTCC.

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[45] *Rollo*, p. 53.

[46] See *Sañado v. Court of Appeals*, 408 Phil. 669 (2001).

[47] *Rollo*, p. 21.

Levi and Vipa were married on March 24, 1961[48] and, in the absence of a marriage settlement, the system of conjugal partnership of gains governs their property relations.[49] It is presumed that the subject property is part of the conjugal properties of Vipa and Levi considering that the same was acquired during the subsistence of their marriage and there being no proof to the contrary.[50]

When Vipa died on March 5, 1994, the conjugal partnership was automatically terminated.[51] Under Article 130 of the Family Code, the conjugal partnership property, upon its dissolution due to the death of either spouse, should be liquidated either in the same proceeding for the settlement of the estate of the deceased or, in the absence thereof, by the surviving spouse within one year from the death of the deceased spouse. That absent any liquidation, any disposition or encumbrance of the conjugal partnership property is void. Thus:

> Article 130. Upon the termination of the marriage by death, the conjugal partnership property shall be liquidated in the same proceeding for the settlement of the estate of the deceased.
>
> **If no judicial settlement proceeding is instituted, the surviving spouse shall liquidate the conjugal partnership property either judicially or extra-judicially within six months from the death of the deceased spouse. If upon the lapse of the six-month period no liquidation is made, any disposition or encumbrance involving the conjugal partnership property of the terminated marriage shall be void.**
>
> Should the surviving spouse contract a subsequent marriage without compliance with the foregoing requirements, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage. (Emphasis ours)

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[48] Certificate of Marriage; *id*. at 133.

[49] CIVIL CODE OF THE PHILIPPINES, Article 119.

[50] CIVIL CODE OF THE PHILIPPINES, Article 160.

[51] CIVIL CODE OF THE PHILIPPINES, Article 175(1).

Article 130 of the Family Code is applicable to conjugal partnership of gains already established between the spouses prior to the effectivity of the Family Code pursuant to Article 105 thereof, *viz.*:

> Article 105. In case the future spouses agree in the marriage settlements that the regime of conjugal partnership of gains shall govern their property relations during marriage, the provisions in this Chapter shall be of supplementary application.
>
> **The provisions of this Chapter shall also apply to conjugal partnerships of gains already established between spouses before the effectivity of this Code**, without prejudice to vested rights already acquired in accordance with the Civil Code or other laws, as provided in Article 256. (Emphasis ours)

Rafael bought Levi's one-half share in the subject property in consideration of ₱500,000.00 as evidenced by the Deed of Sale[52] dated December 29, 2005. At that time, the conjugal partnership properties of Levi and Vipa were not yet liquidated. However, such disposition, notwithstanding the absence of liquidation of the conjugal partnership properties, is not necessarily void.

It bears stressing that under the regime of conjugal partnership of gains, the husband and wife are co-owners of all the property of the conjugal partnership.[53] Thus, upon the termination of the conjugal partnership of gains due to the death of either spouse, the surviving spouse has an actual and vested one-half undivided share of the properties, which does not consist of determinate and segregated properties until liquidation and partition of the conjugal partnership.[54] With respect, however, to the deceased spouse's share in the conjugal partnership properties, an implied ordinary co-ownership ensues among the surviving spouse and the other heirs of the deceased.[55]

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[52] *Rollo*, pp. 137-138.

[53] CIVIL CODE OF THE PHILIPPINES, Article 143.

[54] See *Melecio Domingo v. Spouses Genaro and Elena B. Molina*, G.R. No. 200274, April 20, 2016.

[55] See *Dael v. Intermediate Appellate Court*, 253 Phil. 516, 526 (1989).

Thus, upon Vipa's death, one-half of the subject property was automatically reserved in favor of the surviving spouse, Levi, as his share in the conjugal partnership. The other half, which is Vipa's share, was transmitted to Vipa's heirs – Grace Joy, Jill Frances, and her husband Levi, who is entitled to the same share as that of a legitimate child. The ensuing implied co-ownership is governed by Article 493 of the Civil Code, which provides:

> Article 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and **he may therefore alienate, assign or mortgage it**, and even substitute another person in its enjoyment, except when personal rights are involved. **But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership**. (Emphasis ours)

Although Levi became a co-owner of the conjugal partnership properties with Grace Joy and Jill Frances, he could not yet assert or claim title to any specific portion thereof without an actual partition of the property being first done either by agreement or by judicial decree. Before the partition of a land or thing held in common, no individual or co-owner can claim title to any definite portion thereof. All that the co-owner has is an ideal or abstract quota or proportionate share in the entire land or thing.[56]

Nevertheless, a co-owner could sell his undivided share; hence, Levi had the right to freely sell and dispose of his undivided interest. Thus, the sale by Levi of his one-half undivided share in the subject property was not necessarily void, for his right as a co-owner thereof was effectively transferred, making the buyer, Rafael, a co-owner of the subject property. It must be stressed that the binding force of a contract must be recognized as far as it is legally possible to do so (*quando res non valet ut ago, valeat quantum valere potest*).[57]

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[56] *Sanchez v. Court of Appeals*, 452 Phil. 665, 676 (2003).

[57] See *Lopez v. Vda. de Cuaycong*, 74 Phil. 601 (1944).

However, Rafael became a co-owner of the subject property only on December 29, 2005 – the time when Levi sold his one-half undivided share over the subject property to the former. Thus, from December 29, 2005 Rafael, as a co-owner, has the right to possess the subject property as an incident of ownership. Otherwise stated, prior to his acquisition of Levi's one-half undivided share, Rafael was a mere lessee of the subject property and is thus obliged to pay the rent for his possession thereof.

Accordingly, Rafael could no longer be directed to vacate the subject property since he is already a co-owner thereof. Nevertheless, Rafael is still bound to pay the unpaid rentals from June 1998 until April 2003 in the amount of ₱271,150.00. In *Nacar v. Gallery Frames, et al.*,[58] the Court pointed out that pursuant to Resolution No. 796 of the Bangko Sentral ng Pilipinas Monetary Board, the interest rate of loans or forbearance of money, in the absence of stipulation shall be six percent (6%) effective only from July 1, 2013. Thus, prior to July 1, 2013, the rate of interest on loans or forbearance of money, in the absence of stipulation, is still 12%. Accordingly, the amount of ₱ 271,150.00, representing the unpaid rentals shall earn interest at the rates of 12% *per annum* from the date of the last demand on May 3, 2003 until June 30, 2013 and 6% *per annum* from July 1, 2013 until fully paid.

Further, Rafael is likewise bound to pay reasonable rent for the use and occupancy of the subject property from May 2003 until December 28, 2005 at the rate of ₱3,000.00 per month with interest at the rate of 12% *per annum* from the date of the last demand, *i.e.*, the filing of the complaint with the MTCC on June 12, 2003, until June 30, 2013 and 6% *per annum* from July 1, 2013 until fully paid.

The award of attorney's fees of ₱20,000.00 is likewise proper. Attorney's fees can be awarded in the cases enumerated in Article 2208 of the Civil Code, specifically:

Article 2208. x x x

x x x x x x x x x

[58] 716 Phil. 267 (2013).

(2) Where the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest[.]

Certainly, because of Rafael's unjustified refusal to pay the rents due on the lease of the subject property, the Estate of Vipa was put to unnecessary expense and trouble to protect its interest under paragraph (2), Article 2208 of the Civil Code. In unlawful detainer cases, where attorney's fees are awarded, the same shall not exceed ₱20,000.00.[59]

WHEREFORE, in view of the foregoing disquisitions, the petition for review on *certiorari* is **PARTIALLY GRANTED**. The Decision dated November 26, 2010 and Resolution dated January 24, 2012 issued by the Court of Appeals in CA-G.R. SP No. 04481 are hereby **REVERSED** and **SET ASIDE**. Petitioner Rafael C. Uy is hereby directed to pay the Estate of Vipa Fernandez the following:

1. The amount of ₱271,150.00, representing the unpaid rentals, with interest at the rates of twelve percent (12%) *per annum* from the date of the last demand on May 3, 2003 until June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until fully paid;

2. Reasonable rent for the use and occupancy of the subject property from May 2003 until December 28, 2005 at the rate of ₱3,000.00 *per* month with interest at the rates of twelve percent (12%) *per annum* from the date of the last demand, *i.e.*, the filing of the complaint for unlawful detainer on June 12, 2003, until June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until fully paid; and

3. The amount of ₱20,000.00 as attorney's fees.

SO ORDERED.

Velasco, Jr. (Chairperson), *Bersamin, Jardeleza,* and *Tijam, JJ.,* concur.

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[59] 1991 Revised Rules on Summary Procedure, Section 1(A)(1).

THIRD DIVISION

[G.R. No. 203287. April 5, 2017]

RENATO S.D. DOMINGO on his own behalf and on behalf of his co-heirs of the late SPOUSES FELICIDAD DE DOMINGO and MACARIO C. DOMINGO, *petitioners, vs.* **SPOUSES ENGRACIA D. SINGSON and MANUEL F. SINGSON,** *respondents.*

[G.R. No. 207936. April 5, 2017]

HEIRS OF SPOUSES FELICIDAD S.D. DOMINGO AND MACARIO DOMINGO namely, CONSOLACION D. ROMERO, RAFAEL S.D. DOMINGO, RAMON S.D. DOMINGO, JOSEFINA D. BORJA, ROSARIO S.D. DOMINGO, and RENATO RAMIRO S.D. DOMINGO, *petitioners, vs.* **ENGRACIA D. SINGSON, ESTELITA I. CABALLES, and THE REGISTER OF DEEDS, SAN JUAN CITY, METRO MANILA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PREJUDICIAL QUESTION; CONCEPT AND RATIONALE.— A prejudicial question is understood in law to be that which arises in a case the resolution of which is a logical antecedent of the issue involved in said case and the cognizance of which pertains to another tribunal. The doctrine of prejudicial question comes into play generally in a situation where civil and criminal actions are pending and the issues involved in both cases are similar or so closely related that an issue must be pre-emptively resolved in the civil case before the criminal action can proceed. The rationale behind the principle of prejudicial question is to avoid two conflicting decisions.

2. ID.; ID.; ID.; REQUISITES THAT MUST CONCUR FOR A CIVIL ACTION TO BE CONSIDERED PREJUDICIAL TO A CRIMINAL CASE.— For a civil action to be considered

prejudicial to a criminal case as to cause the suspension of the criminal proceedings until the final resolution of the civil case, the following requisites must be present: (1) the civil case involves facts intimately related to those upon which the criminal prosecution would be based; (2) in the resolution of the issue or issues raised in the civil action, the guilt or innocence of the accused would necessarily be determined; and (3) jurisdiction to try said question must be lodged in another tribunal.

3. ID.; ID.; ID.; PREJUDICIAL QUESTION EXISTS IN CASES AT BAR; SUSPENSION OF THE CRIMINAL PROCEEDINGS WAS PROPER.— Based on the issues raised in both Civil Case No. 70898 and Criminal Case No. 137867 against the Spouses Singson, and in the light of the foregoing concepts of a prejudicial question, there indeed appears to be a prejudicial question in the case at bar. The defense of the Spouses Singson in the civil case for annulment of sale is that Engracia bought the subject property from her parents prior to their demise and that their signatures appearing on the Absolute Deed of Sale are true and genuine. Their allegation in the civil case is based on the very same facts, which would be necessarily determinative of their guilt or Innocence as accused in the criminal case. If the signatures of the Spouses Domingo in the Absolute Deed of Sale are genuine, then there would be no falsification and the Spouses Singson would be innocent of the offense charged. Otherwise stated, a conviction on Criminal Case No. 137867, should it be allowed to proceed ahead, would be a gross injustice and would have to be set aside if it were finally decided in Civil Case No. 70898 that indeed the signatures of the Spouses Domingo were authentic. x x x Accordingly, the RTC Branch 264 correctly suspended the proceedings in Criminal Case No. 137867 on the ground of prejudicial question since, at the time the proceedings in the criminal case were suspended, Civil Case No. 70898 was still pending.

4. ID.; CIVIL PROCEDURE; PRE-TRIAL; EFFECTS OF FAILURE OF A PARTY TO APPEAR.— Under the Rules of Court, the parties and their counsel are mandated to appear at the pre-trial. Pre-trial cannot be taken for granted. It is not a mere technicality in court proceedings for it serves a vital objective: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation. Thus, the failure of a party to appear at the pre-trial has adverse consequences. If

the absent party is the plaintiff, then his case shall be dismissed, which shall be with prejudice, unless otherwise ordered by the court. If it is the defendant who fails to appear, then the plaintiff is allowed to present his evidence *ex parte* and the court shall render judgment on the basis thereof.

5. ID.; ID.; ID.; FAILURE OF THE PLAINTIFF TO APPEAR AT THE PRE-TRIAL RESULTED IN THE DISMISSAL OF THE COMPLAINT.— What transpired thereafter is a series of resetting of the hearing due to the failure of the petitioners and/or their counsel to appear during the scheduled pre-trial dates. During the scheduled pre-trial on March 23, 2011, the petitioners and their counsel again failed to appear without informing the RTC of the reason for their non-appearance. Clearly, the petitioners' wanton disregard of scheduled pre-trial indeed justified the dismissal of their complaint. It should be stressed that procedural rules are not to be disregarded or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules they are to be followed, except only when for the most persuasive of reasons they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. The petitioners have not shown any persuasive reason, which would justify a relaxation of the rules on pre-trial. That the petitioners' counsel was supposedly indisposed during the pre-trial on March 23, 2011 does not excuse the petitioners themselves from attending the pre-trial. Moreover, the petitioners have failed to advance any valid justification for their and their counsel's failure to attend the previously scheduled pre-trial hearings. Accordingly, the trial court could not be faulted for dismissing the complaint under Section 5 of Rule 18 of the Rules of Court.

6. ID.; ID.; MOTIONS; THE REQUIREMENT OF NOTICE OF HEARING OF THE MOTION TO THE OPPOSING PARTY IS MERELY DIRECTORY.— That the notice of hearing is addressed to the petitioners' counsel and not to the petitioners directly is immaterial and would not be a cause to consider the same defective. The requirement under Section 4 of Rule 15 of the Rules of Court that the notice be addressed to the opposing party is merely directory; what matters is that adverse party

had sufficient notice of the hearing of the motion. Further, even if the notice of hearing in the motion to dismiss failed to state the exact date of hearing, the defect was cured when the RTC considered the same in the hearing that was held on May 26, 2011 and by the fact that the petitioners, through their counsel, were notified of the existence of the said motion.

APPEARANCES OF COUNSEL

Edwin V. Patricio for petitioners.
Pajarez Asual & Adaci for respondents.

D E C I S I O N

REYES, *J.*:

Before the Court are two consolidated petitions for review on *certiorari* – G.R. Nos. 203287[1] and 207936[2] – under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[3] dated August 31, 2012 in CA-G.R. SP No. 122054 and the Decision[4] dated June 28, 2013 in CA-G.R. CV No. 98026, both issued by the Court of Appeals (CA).

Facts

The spouses Macario C. Domingo (Macario) and Felicidad S.D. Domingo (Felicidad) (Spouses Domingo) are the parents of respondent Engracia D. Singson (Engracia) and petitioners Renato S.D. Domingo (Renato) and his co-heirs whom he represents herein, namely: Consolacion D. Romero

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[1] *Rollo* (G.R. No. 203287), pp. 10-32.

[2] *Rollo* (G.R. No. 207936), pp. 14-85.

[3] Penned by Associate Justice Angelita A. Gacutan, with Associate Justices Fernanda Lampas Peralta and Francisco P. Acosta concurring; *rollo* (G.R. No. 203287), pp. 212-221.

[4] Penned by Associate Justice Normandie B. Pizzaro, with Associate Justices Remedios A. Salazar-Fernando and Manuel M. Barrios concurring; *rollo* (G.R. No. 207936), pp. 89-101.

(Consolacion), Josefina D. Borja, and Rafael, Ramon, and Rosario, all surnamed Domingo (collectively, the petitioners).[5]

During their lifetime, the Spouses Domingo owned a parcel of land, situated in F. Sevilla Street, San Juan, Metro Manila, covered by Transfer Certificate of Title (TCT) No. 32600 (23937) 845-R,[6] and the house built thereon (subject property). Macario died on February 22, 1981, while Felicidad died on September 14, 1997.[7]

It appears that on September 26, 2006, Engracia filed with the Metropolitan Trial Court of Manila a complaint[8] for ejectment/ unlawful detainer, docketed as Civil Case No. 9534, against Consolacion, Rosario, Rafael, and Ramon. Engracia claimed that she is the absolute owner of the subject property, having bought the same from the Spouses Domingo as evidenced by an Absolute Deed of Sale[9] dated June 6, 2006. She likewise averred that TCT No. 32600 (23937) 845-R was already cancelled and TCT No. 12575[10] covering the subject property was already issued under her name. The petitioners only learned of the supposed sale of the subject property when they received the summons and a copy of Engracia's complaint in Civil Case No. 9534.

Consequently, on July 31, 2006, the petitioners filed a complaint[11] with the Regional Trial Court (RTC) of Pasig City, which sought the nullity of the sale. They alleged that the Absolute Deed of Sale dated June 6, 2006, upon which Engracia bases her ownership of the subject property, was a nullity since the signatures of their parents appearing thereon as the supposed

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[5] *Rollo* (G.R. No. 203287), p. 12.

[6] *Id.* at 84-86.

[7] *Id.* at 213.

[8] *Id.* at 90-92.

[9] *Id.* at 95-97.

[10] *Id.* at 93-94.

[11] *Id.* at 98-103.

vendors were forged.[12] The case was docketed as Civil Case No. 70898 and was raffled to Branch 160 of the RTC.

Meanwhile, on February 28, 2007, Renato, Consolacion, and Ramon filed a Joint Affidavit Complaint[13] with the Office of the City Prosecutor (OCP) of Pasig City, claiming that Engracia falsified the signatures of their parents in the Absolute Deed of Sale and, thus, charging her with the crimes of falsification of public document, estafa, and use of falsified documents. Consequently, on May 6, 2008, the OCP filed an Information[14] with the RTC, charging Spouses Engracia and Manuel Singson (Spouses Singson) with the crime of estafa through falsification of public documents. The case was docketed as Criminal Case No. 137867 and was raffled to Branch 264 of the RTC.

On July 11, 2008, the Spouses Singson filed a Motion to Suspend Proceedings Due to Prejudicial Question[15] with the RTC in Criminal Case No. 137867. They alleged that the validity and genuineness of the Absolute Deed of Sale, which is the subject of Civil Case No. 70898 then still pending with the RTC Branch 160, are determinative of their guilt of the crime charged.[16] Accordingly, they prayed that the proceedings in Criminal Case No. 137867 be suspended pursuant to Section 6 of Rule 111 of the Rules of Court.[17] The private prosecutor filed an opposition to the motion, stating that Criminal Case No. 137867 can proceed independently from Civil Case No. 70898 pursuant to Article 33 of the Civil Code, in relation to Section 3 of Rule 111 of the Rules of Court.[18]

On February 12, 2010, the RTC Branch 264, issued an Order[19] in Criminal Case No. 137867, which granted the motion to

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[12] *Id.* at 100.

[13] *Id.* at 105-108.

[14] *Id.* at 119-120.

[15] *Id.* at 134-136.

[16] *Id.* at 134.

[17] *Id.* at 135.

[18] *Id.* at 137-140.

[19] Rendered by Presiding Judge Leoncio M. Janolo, Jr.; *id.* at 141-143.

suspend the proceedings filed by the Spouses Singson. The private prosecutor sought a reconsideration[20] of the Order dated February 12, 2010, but it was denied by the RTC in its Order[21] dated June 7, 2011.

Unperturbed, the petitioners filed a petition for *certiorari*[22] with the CA, docketed as CA-G.R. SP No. 122054, claiming that the RTC gravely abused its discretion when it directed the suspension of the proceedings in Criminal Case No. 137867 on the ground of prejudicial question. They pointed out that the bases of their respective claims in both Civil Case No. 70898 and Criminal Case No. 137867 are the forged signatures of their deceased parents.[23] They claimed that where both a civil and criminal case arising from the same facts are filed in court, the criminal case takes precedence.[24]

On August 31, 2012, the CA rendered a Decision[25] in CA-G.R. SP No. 122054, which denied the petition for *certiorari.* The CA opined that all the elements of a prejudicial question under Sections 6 and 7 of Rule 111 of the Rules of Court are present; hence, the RTC did not abuse its discretion when it directed the suspension of Criminal Case No. 137867.[26]

Meanwhile, Civil Case No. 70898 was initially set for pre-trial conference on February 7, 2008.[27] However, upon motion[28]

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[20] *Id.* at 145-149.

[21] *Id.* at 150-151.

[22] *Id.* at 35-53.

[23] *Id.* at 44.

[24] *Id.* at 49.

[25] *Id.* at 212-221.

[26] *Id.* at 217-218.

[27] Order dated November 13, 2007 issued by Judge Amelia A. Fabros; *rollo* (G.R. No. 207936), pp. 133-134.

[28] *Id.* at 139-141.

of Engracia, the pre-trial was reset on March 6, 2008.[29] During the pre-trial conference on March 6, 2008, Engracia moved that Rafael be substituted by his heirs since he had already died on October 15, 2007.[30] Thus, the RTC issued an Order[31] dated March 6, 2008 directing the petitioners to comment on Engracia's motion to substitute Rafael as plaintiff in the case below. On April 8, 2008, Engracia filed a Motion to Dismiss[32] the case on the ground that the petitioners failed to substitute the heirs of Rafael as plaintiff in the case. The motion to dismiss was consequently denied by the RTC in its Order[33] dated November 12, 2008 for lack of merit.

The continuation of the pre-trial conference, which has been sidelined pending the resolution of Engracia's motion to dismiss, was then set on March 19, 2009.[34] On March 12, 2009, Engracia's counsel, with her conformity, withdrew his appearance as counsel in the case.[35] During the pre-trial conference on March 19, 2009, the petitioners and their counsel appeared. Engracia was likewise present although without her new counsel. Accordingly, pre-trial was again reset on June 1, 2009 to afford Engracia time to secure the services of a new counsel.[36]

Thereafter, Atty. Tristram B. Zoleta entered his appearance for Engracia and moved that the pre-trial conference on June 1, 2009 be reset on July 13 or 20, 2009.[37] However, Judge Amelia A. Fabros (Judge Fabros) was reassigned to Muntinlupa City

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[29] *Id.* at 142.

[30] *Id.* at 26-27.

[31] *Id.* at 143.

[32] *Id.* at 144-146.

[33] *Id.* at 156.

[34] *Id.* at 157.

[55] *Id.* at 158-159.

[36] *Id.* at 161.

[37] *Id.* at 163-166.

and Judge Myrna V. Lim-Verano (Judge Lim-Verano) was named to replace Judge Fabros as Presiding Judge of Branch 160.[38] On June 17, 2010, Judge Lim-Verano, having previously presided over Criminal Case No. 137867, recused herself from adjudicating Civil Case No. 70898.[39] Civil Case No. 70898 was subsequently raffled to Branch 264 of the RTC then presided by Judge Leoncio M. Janolo, Jr. (Judge Janolo). On July 15, 2010, Judge Janolo issued an Order,[40] setting the pre-trial of the case on August 25, 2010.

On August 12, 2010, the petitioners' counsel moved to reset the pre-trial on September 15, 2010 due to previously scheduled hearings in the trial courts of Malolos City and Parañaque City.[41] Accordingly, the pre-trial was reset on October 6, 2010.[42] On October 6, 2010, the respective counsels of the parties jointly agreed to reset the pre-trial on December 9, 2010.[43] However, the pre-trial scheduled on December 9, 2010 was again reset on January 24, 2011.[44]

On December 27, 2010, the petitioners filed a motion,[45] which sought to exclude Rafael as being represented by Renato. They averred that they were unable to effect a substitution of the heirs of Rafael as plaintiffs in the case since they could not locate them.

On January 27, 2011, the petitioners' counsel failed to appear and the pre-trial was reset on March 24, 2011.[46] In the morning

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[38] *Id.* at 30.

[39] *Id.* at 171.

[40] *Id.* at 172.

[41] *Id.* at 174-176.

[42] *Id.* at 177.

[43] *Id.* at 178.

[44] *Id.* at 179.

[45] *Id.* at 180-182.

[46] *Id.* at 190.

of March 23, 2011, the petitioners' counsel informed Renato that he would not be able to attend the pre-trial conference since he was indisposed and asked the latter to go to the RTC and request for a resetting of the hearing. When the case was called, the petitioners and their counsel failed to appear, which thus prompted Engracia's counsel to move for the dismissal of the complaint and be given time to file the proper pleading. Thus, the RTC gave Engracia's counsel 10 days within which to file a motion to dismiss. The continuation of the pre-trial was reset on May 26, 2011.[47]

On April 5, 2011, Engracia filed a motion to dismiss[48] in compliance with the RTC's directive.[49] During the pre-trial on May 26, 2011, the RTC gave the parties' respective counsels, upon their request, five days to file a comment on the motion to dismiss and a reply to such comment, after which time the motion to dismiss is deemed submitted for resolution.[50]

On July 29, 2011, the RTC Branch 264 issued an Order[51] in Civil Case No. 70898, dismissing the petitioners' complaint due to their and their counsel's repeated failure to appear during the scheduled pre-trial hearing dates.

The petitioners then filed an appeal with the CA, docketed as CA-G.R. CV No. 98026, insisting that the RTC erred in dismissing their complaint on a mere technicality. They also claimed that Engracia's motion to dismiss is but a mere scrap of paper since the same did not comply with Sections 4, 5 and 6 of Rule 15 of the Rules of Court. The CA, in its Decision[52] dated June 28, 2013 in CA-G.R. CV No. 98026, affirmed the RTC's dismissal of the petitioners' complaint.

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[47] *Id.* at 199.

[48] *Id.* at 201-205.

[49] *Id.* at 93.

[50] *Id.* at 206.

[51] *Id.* at 225-228.

[52] *Id.* at 89-101.

Issues

Essentially, the issues set forth for the Court's resolution are: *first,* whether the proceedings in Criminal Case No. 137867 were properly suspended on the ground of prejudicial question; and *second,* whether the dismissal of the petitioners' complaint in Civil Case No. 70898 due to failure to prosecute was proper.

Ruling of the Court

The petitions are denied.

First Issue: Suspension of the proceedings in Criminal Case No. 137867 on the ground of prejudicial question

A prejudicial question is understood in law to be that which arises in a case the resolution of which is a logical antecedent of the issue involved in said case and the cognizance of which pertains to another tribunal. The doctrine of prejudicial question comes into play generally in a situation where civil and criminal actions are pending and the issues involved in both cases are similar or so closely related that an issue must be pre-emptively resolved in the civil case before the criminal action can proceed.[53] The rationale behind the principle of prejudicial question is to avoid two conflicting decisions.[54]

For a civil action to be considered prejudicial to a criminal case as to cause the suspension of the criminal proceedings until the final resolution of the civil case, the following requisites must be present: (1) the civil case involves facts intimately related to those upon which the criminal prosecution would be based; (2) in the resolution of the issue or issues raised in the civil action, the guilt or innocence of the accused would necessarily be determined; and (3) jurisdiction to try said question must be lodged in another tribunal.[55]

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[53] *Quiambao v. Hon. Osorio,* 242 Phil. 441, 444 (1988).

[54] *Ty-de Zuzuarregui v. Hon. Judge Villarosa, et al.,* 631 Phil. 375, 385 (2010).

[55] *Prado v. People, et al.,* 218 Phil. 573, 577 (1984).

Based on the issues raised in both Civil Case No. 70898 and Criminal Case No. 137867 against the Spouses Singson, and in the light of the foregoing concepts of a prejudicial question, there indeed appears to be a prejudicial question in the case at bar. The defense of the Spouses Singson in the civil case for annulment of sale is that Engracia bought the subject property from her parents prior to their demise and that their signatures appearing on the Absolute Deed of Sale are true and genuine. Their allegation in the civil case is based on the very same facts, which would be necessarily determinative of their guilt or innocence as accused in the criminal case.

If the signatures of the Spouses Domingo in the Absolute Deed of Sale are genuine, then there would be no falsification and the Spouses Singson would be innocent of the offense charged. Otherwise stated, a conviction on Criminal Case No. 137867, should it be allowed to proceed ahead, would be a gross injustice and would have to be set aside if it were finally decided in Civil Case No. 70898 that indeed the signatures of the Spouses Domingo were authentic.

The petitioners' reliance on Section 3[56] of Rule 111 of the Rules of Court, in relation to Article 33[57] of the Civil Code, is misplaced. Section 3 provides that a civil action for damages in cases provided under Articles 32, 33, 34 and 2176 of the Civil Code, which may also constitute criminal offenses, may proceed independently of the criminal action. In instances where

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[56] Sec. 3. *When civil action may proceed independently.* – In the cases provided in Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines, the independent civil action may be brought by the offended party. It shall proceed independently of the criminal action and shall require only a preponderance of evidence. In no case, however, may the offended party recover damages twice for the same act or omission charged in the criminal action.

[57] Art. 33. In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

an independent civil action is permitted, the result of the criminal action, whether of acquittal or conviction, is entirely irrelevant to the civil action.[58]

The concept of independent civil actions finds no application in this case. Clearly, Civil Case No. 70898 is very much relevant to the proceedings in Criminal Case No. 137867. To stress, the main issue raised in Civil Case No. 70898, *i.e.,* the genuineness of the signature of the Spouses Domingo appearing in the Absolute Deed of Sale, is intimately related to the charge of estafa through falsification of public document in Criminal Case No. 137867; the resolution of the main issue in Civil Case No. 70898 would necessarily be determinative of the guilt or innocence of the Spouses Singson.

Accordingly, the RTC Branch 264 correctly suspended the proceedings in Criminal Case No. 137867 on the ground of prejudicial question since, at the time the proceedings in the criminal case were suspended, Civil Case No. 70898 was still pending.

Second Issue: Dismissal of the petitioners' complaint in Civil Case No. 70898

Under the Rules of Court, the parties and their counsel are mandated to appear at the pre-trial.[59] Pre-trial cannot be taken for granted. It is not a mere technicality in court proceedings for it serves a vital objective: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation.[60] Thus, the failure of a party to appear at the pre-trial has adverse consequences. If the absent party is the plaintiff, then his case shall be dismissed, which shall be with prejudice, unless

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[58] See *Salta v. Hon. Judge De Veyra, etc., et al.,* 202 Phil. 527, 533 (1982), citing *Dionisio, et al. v. Hon. C. G. Aluendia, et al.,* 102 Phil. 443 (1957).

[59] RULES OF COURT, Rule 18, Section 4.

[60] See *The Philippine American Life & General Insurance Company v. Enario,* 645 Phil. 166, 176-177 (2010).

otherwise ordered by the court. If it is the defendant who fails to appear, then the plaintiff is allowed to present his evidence *ex parte* and the court shall render judgment on the basis thereof.[61]

Civil Case No. 70898 was initially set for pre-trial on February 7, 2008. In July 2010, after more than two years, Civil Case No. 70898, which was still in the pre-trial stage, was re-raffled to Branch 264 presided by Judge Janolo; the latter immediately scheduled the pre-trial on August 25, 2010. What transpired thereafter is a series of resetting of the hearing due to the failure of the petitioners and/or their counsel to appear during the scheduled pre-trial dates. During the scheduled pre-trial on March 23, 2011, the petitioners and their counsel again failed to appear without informing the RTC of the reason for their non-appearance. Clearly, the petitioners' wanton disregard of scheduled pre-trial indeed justified the dismissal of their complaint.

It should be stressed that procedural rules are not to be disregarded or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules they are to be followed, except only when for the most persuasive of reasons they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[62]

The petitioners have not shown any persuasive reason, which would justify a relaxation of the rules on pre-trial. That the petitioners' counsel was supposedly indisposed during the pre-trial on March 23, 2011 does not excuse the petitioners themselves from attending the pre-trial. Moreover, the petitioners have failed to advance any valid justification for their and their counsel's failure to attend the previously scheduled pre-trial hearings. Accordingly, the trial court could not be faulted for dismissing the complaint under Section 5 of Rule 18 of the Rules of Court.

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[61] See *Tolentino, et al. v. Laurel, et al.,* 682 Phil. 527, 536 (2012); RULES OF COURT, Rule 18, Section 5.

[62] See *Social Security System v. Hon. Chaves,* 483 Phil. 292, 301 (2004).

The petitioners' claim that the motion to dismiss filed by Engracia with the RTC is a mere scrap of paper for her failure to comply with the mandatory provisions of Sections 4, 5 and 6 of Rule 15 of the Rules of Court is without merit. Said sections provide that:

Sec. 4. *Hearing of motion.* Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

Sec. 5. *Notice of hearing.* The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

Sec. 6. *Proof of service necessary.* No written motion set for hearing shall be acted upon by the court without proof of service thereof.

The pertinent portions of the motion to dismiss filed by Engracia with the RTC read:

N O T I C E

CLERK OF COURT
RTC, Branch 264
Pasig City [San Juan Station]

ATTY. EMERITO M. SALVA
Counsel for the Plaintiffs
15th Floor, Washington Tower, Asia World
Complex, Marina Bay, Pacific Avenue
Parañaque City

G r e e t i n g s:

Please submit the foregoing motion [in compliance with the order of the Honorable Court during the hearing on March 23, 2011] for

the consideration and resolution of the Honorable Court immediately upon receipt hereof.

(Sgd.)
TRISTRAM B. ZOLETA

EXPLANATION

Copy of this pleading was sent to the counsel for the plaintiffs through registered mail due to lack of messenger at the time of service rendering personal service not possible

(Sgd.)
TRISTRAM B. ZOLETA[63]

That the notice of hearing is addressed to the petitioners' counsel and not to the petitioners directly is immaterial and would not be a cause to consider the same defective. The requirement under Section 4 of Rule 15 of the Rules of Court that the notice be addressed to the opposing party is merely directory; what matters is that adverse party had sufficient notice of the hearing of the motion.[64] Further, even if the notice of hearing in the motion to dismiss failed to state the exact date of hearing, the defect was cured when the RTC considered the same in the hearing that was held on May 26, 2011 and by the fact that the petitioners, through their counsel, were notified of the existence of the said motion.[65]

Anent the supposed lack of proof of service of the motion to dismiss upon the petitioners, suffice it to state that a copy of the said motion was served upon and received by the petitioners' counsel on April 15, 2011.[66] The petitioners were duly given the full opportunity to be heard and to argue their

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[63] *Rollo* (G.R. No. 207936), pp. 204-205.

[64] See *Omico Mining and Industrial Corporation v. Judge Vallejos,* 159 Phil. 886 (1975).

[65] See *Un Giok v. Matusa, et al.,* 101 Phil. 727 (1957).

[66] *Rollo* (G.R. No. 207936), p. 38.

case when the RTC required them to file a comment to the motion to dismiss during the hearing on May 26, 2011, which they did on May 30, 2011.[67] "What the law really eschews is not the lack of previous notice of hearing but the lack of opportunity to be heard."[68]

Considering, however, that the complaint in Civil Case No. 70898 had already been dismissed with prejudice on account of the petitioners' and their counsel's persistent failure to appear during the scheduled pre-trial hearings, the proceedings in Criminal Case No. 137867 should now proceed. There is no longer any prejudicial question in Criminal Case No. 137867 since the complaint in Civil Case No. 70898 had been dismissed without definitely resolving the question of whether the signatures of the Spouses Domingo in the Absolute Deed of Sale are genuine. Thus, it is up for the RTC Branch 264, in Criminal Case No. 137867, to resolve the said issue.

WHEREFORE, in view of the foregoing disquisitions, the petitions in G.R. Nos. 203287 and 207936 are hereby **DENIED.** The Decision dated August 31, 2012 in CA-G.R. SP No. 122054 and the Decision dated June 28, 2013 in CA-G.R. CV No. 98026 issued by the Court of Appeals are hereby **AFFIRMED.** Accordingly, the Regional Trial Court of Pasig City, Branch 264, is hereby **DIRECTED** to proceed with Criminal Case No. 137867 with dispatch.

SO ORDERED.

Velasco, Jr. (Chairperson), *Bersamin, Jardeleza,* and *Tijam, JJ.,* concur.

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[67] *Id.* at 40.

[68] See *Patricio v. Judge Leviste,* 254 Phil. 780, 786 (1989).

SPECIAL THIRD DIVISION

[G.R. No. 217617. April 5, 2017]

CARMELITA T. BORLONGAN, *petitioner, vs.* **BANCO DE ORO (formerly EQUITABLE PCI BANK),** *respondent.*

[G.R. No. 218540. April 5, 2017]

ELISEO C. BORLONGAN, JR., *petitioner, vs.* **BDO UNIBANK, INC. (formerly EQUITABLE PCI BANK),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; WRIT OF PRELIMINARY INJUNCTION ISSUED WHEN: (1) THERE IS A CLEAR AND UNMISTAKABLE RIGHT THAT MUST BE PROTECTED; AND (2) THERE IS AN URGENT AND PARAMOUNT NECESSITY FOR THE WRIT TO PREVENT SERIOUS DAMAGE.— [A] writ of preliminary injunction is warranted where there is a showing that there exists a right to be protected and that the acts against which the writ is to be directed violate an established right. Otherwise stated, for a court to decide on the propriety of issuing a TRO and/or a WPI, it must only inquire into the existence of two things: (1) a clear and unmistakable right that must be protected; and (2) an urgent and paramount necessity for the writ to prevent serious damage.

2. ID.; ID.; ID.; ID.; STARK EXISTENCE OF GROUNDS FOR ISSUANCE OF A WRIT OF PREMILINARY INJUNCTION PRESENT IN CASE AR BAR.— The appellate court's error is readily apparent given the stark existence of the grounds for the issuance of a writ of preliminary injunction. On the first ground, petitioner has a clear and unmistakable right that must be protected. This right is not just her proprietary rights over the subject property but her **constitutionally protected right to due process** before she can be deprived of her property. No less than Section 1 of the Bill of Rights of the 1987 Constitution mandates 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 laws. x x x In its classic formulation, due process means that any person with interest to the thing in litigation **must be notified** and **given an opportunity to defend** that interest. Thus, as the essence of due process lies in the reasonable opportunity to be heard and to submit any evidence the defendant may have in support of her defense, **she must be properly served the summons of the court**. In other words, the service of summons is a vital and indispensable ingredient of due process and compliance with the rules regarding the service of the summons is as much an issue of due process as it is of jurisdiction. Unfortunately, as will be discussed, it would seem that the Constitutional right of the petitioner to be properly served the summons and be notified has been disregarded by the officers of the trial court. At this very juncture, the existence of the second ground for the issuance of a TRO and/or WPI is self-evident. **Without a TRO and/or WPI** enjoining the respondent bank from continuing in the possession and consolidating the ownership of the subject property, petitioner's **right to be afforded due process will unceasingly be violated**. It need not be stressed that a continuous violation of constitutional rights is by itself a grave and irreparable injury that this or any court cannot plausibly tolerate. Without a doubt, the appellate court should have acted intrepidly and issued the TRO and/or WPI posthaste to protect the constitutional rights of petitioner, as it is duty-bound to do.

3. ID.; CIVIL PROCEDURE; SUMMONS; HIERARCHY AND RULES IN THE SERVICE OF SUMMONS.— It is, therefore, proper to state that the hierarchy and rules in the service of summons are as follows: (1) Personal service; (2) Substituted service, if for justifiable causes the defendant cannot be served within a reasonable time; and (3) Service by publication, whenever the defendant's whereabouts are unknown and cannot be ascertained by diligent inquiry. Simply put, personal service of summons is the preferred mode. And, the rules on the service of summons other than by personal service **may be used *only* as prescribed and *only* in the circumstances authorized by statute**. Thus, **the *impossibility* of prompt personal service must be shown** by stating that efforts have been made to find the defendant personally and that such efforts have failed before

substituted service may be availed. Furthermore, their rules must be followed strictly, faithfully and fully as they are extraordinary in character and considered in derogation of the usual method of service.

4. ID.; ID.; ID.; ID.; CIRCUMSTANCES IN CASE AT BAR DO NOT JUSTIFY RESORT TO SERVICE OF SUMMONS BY PUBLICATION.— In the case now before Us, the summons was served on the petitioner by **publication**. Yet, the circumstances surrounding the case do not justify the resort. Consider: in July 2003, the sheriff attempted to serve the summons on the defendants, including petitioner Carmelita, at Fumakilla Compound, i.e., at the property already foreclosed, acquired, and possessed by the respondent bank as early as August 2001. Immediately after this ***single attempt*** at personal service in July 2003, the respondent bank moved in October 2003 for leave to serve the summons by publication (and not even substituted service), which motion the RTC granted. Clearly, **there was no diligent effort** made to find the petitioner and properly serve her the summons before the service by publication was allowed. Neither was it impossible to locate the residence of petitioner and her whereabouts. It should be noted that the principal obligor in CC No. 03-0713 was Tancho Corporation and petitioner Carmelita was impleaded only because she supposedly signed a surety agreement as a director. As a juridical person, Tancho Corporation is required to file mandatory corporate papers with the Securities and Exchange Commission (SEC), such as its General Information Sheet (GIS). In 1997 and 2000, the GIS filed by Tancho Corporation with the SEC provided the names of its directors and their addresses. One of these directors included petitioner Carmelita with her address listed at 41 Chicago St., Quezon City. The GIS of Tancho Corporation was readily available to the public including the RTC's process server and respondent bank. Patently, it cannot be plausibly argued that it was impossible to find the petitioner and personally serve her with summons.

5. ID.; JUDGMENTS; EXECUTION; STRANGER OR THIRD-PARTY CLAIMANT OF PROPERTY UNDER EXECUTION MAY VINDICATE HIS CLAIM TO THE PROPERTY IN A SEPARATE ACTION IN ANOTHER COURT; THE HUSBAND WHO WAS NOT A PARTY TO THE SUIT BUT WHOSE CONJUGAL PROPERTY WAS

EXECUTED ON ACCOUNT OF THE OTHER'S SPOUSE DEBT IS A STRANGER TO THE SUIT IF SUCH DEBT DID NOT REDOUND TO THE BENEFIT OF THE CONJUGAL PARTNERSHIP.— Section 16, Rule 39 of the Rules of Court allows third-party claimants of properties under execution to vindicate their claims to the property in a separate action with another court. It states, thus: SECTION 16. *Proceedings Where Property Claimed by Third Person*. — x x x **Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action**, x x x Clearly, the availability of the remedy provided under the foregoing provision requires only that that the claim is a third-party or a "stranger" to the case. The poser then is this: is the husband, who was not a party to the suit but whose conjugal property was executed on account of the other spouse's debt, a "stranger" to the suit? In *Buado v. Court of Appeals*, this Court had the opportunity to clarify that, to resolve the issue, it must first be determined whether the debt had redounded to the benefit of the conjugal partnership or not. In the negative, the spouse is a stranger to the suit who can file an independent separate action, distinct from the action in which the writ was issued. x x x In the present case, it is not disputed that the conjugal property was attached on the basis of **a surety agreement** allegedly signed by Carmelita for and in behalf of Tancho Corporation. In our 2004 Decision in *Spouses Ching v. Court of Appeals*, we elucidated that **there is no presumption that the conjugal partnership is benefited when a spouse enters into a contract of surety**[.] x x x [I]t is not apparent from the records of this case that BDO had established the benefit to the conjugal partnership flowing from the surety agreement allegedly signed by Carmelita. Thus, Eliseo's claim over the subject property lodged with the RTC Pasig is proper, with the latter correctly exercising jurisdiction thereon. x x x [T]o now deny Eliseo the opportunity to question the attachment made by the RTC Makati in a separate and independent action will be to, again, refuse him the due process of law before their property is taken. As this Court is duty-bound to protect and enforce Constitutional rights, this we cannot allow.

APPEARANCES OF COUNSEL

J.C. Yrreverre Law Firm for petitioner Carmelita T. Borlongan.

Karaan and Karaan Law Office for petitioner Eliseo C. Borlongan, Jr.

Martinez Vergara Gonzalez & Serrano for respondent Banco de Oro in G.R. No. 217617.

Isip San Juan Guirnalda & Associates for respondent Banco de Oro in G.R. No. 218540.

R E S O L U T I O N

VELASCO, JR., *J.*:

Nature of the Case

Before the Court are two consolidated petitions invariably assailing the foreclosure sale of a property without properly serving the summons upon its owners.

Factual Antecedents

Sometime in 1976, Eliseo Borlongan, Jr. (Eliseo) and his wife Carmelita, acquired a real property located at No. 111, Sampaguita St., Valle Verde II, Pasig City covered by Transfer Certificate of Title (TCT) No. 0421 (the subject property). In 2012, they went to the Registry of Deeds of Pasig City to obtain a copy of the TCT in preparation for a prospective sale of the subject property. To their surprise, the title contained an annotation that the property covered thereby was the subject of an execution sale in Civil Case (CC) No. 03-0713 pending before Branch 134 of the Regional Trial Court of Makati City (Makati RTC).

Petitioner immediately procured a copy of the records of CC No. 03-0713 and found out that respondent Banco de Oro (BDO), formerly Equitable PCI Bank, filed a complaint for sum of money against Tancho Corporation, the principal debtor of loan obligations obtained from the bank. Likewise impleaded were several persons, including Carmelita, who supposedly

signed four (4) security agreements totaling ₱13,500,000 to guarantee the obligations of Tancho Corporation.

It appears from the records of CC No. 03-0713 that on July 2, 2003, the Makati RTC issued an Order directing the service of summons to all the defendants at the business address of Tancho Corporation provided by BDO: Fumakilla Compound, Amang Rodriguez Avenue, Brgy. Dela Paz, Pasig City (Fumakilla Compound).

Parenthetically, the records of CC No. 03-0713 show that respondent BDO already foreclosed the Fumakilla Compound as early as August 21, 2000, following Tancho Corporation's failure to pay its obligation, and BDO already consolidated its ownership of the property on November 16, 2001.

Understandably, on July 31, 2003, the process server filed an Officer's Return stating that summons remained unserved as the "defendants are no longer holding office at [Fumakilla Compound]."

On October 27, 2003, after the single attempt at personal service on Carmelita and her co-defendants, BDO moved for leave to serve the summons by publication. On October 28, 2003, the RTC granted the motion.

On August 10, 2004, BDO filed an ex-parte Motion for the Issuance of a Writ of Attachment against the defendants, including Carmelita. During the hearing on the motion, BDO submitted a copy of the title of the subject property. The Makati RTC thereafter granted BDO's motion and a Writ of Attachment was issued against the defendants in CC No. 03-0713, effectively attaching the subject property on behalf of BDO.

On December 20, 2005, BDO filed an ex-parte motion praying, among others, that the summons and the complaint be served against Carmelita at the subject property. The Makati RTC granted the motion. On February 9, 2006, the Sheriff filed a return stating that no actual personal service was made as Carmelita "is no longer residing at the given address and the said address is for 'rent,' as per information gathered from the security guard on duty."

On May 30, 2006, however, BDO filed a manifestation stating that it had complied with the October 28, 2003 Order of the Makati RTC having caused the publication of the alias summons and the complaint in *People's Taliba* on May 15, 2006.

Thereafter, upon BDO's motion, the Makati RTC declared the defendants in CC No. 03-0713, including Carmelita, in default. BDO soon after proceeded to present its evidence ex-parte.

On November 29, 2007, the Makati RTC rendered a Decision holding the defendants in CC No. 03-0713 liable to pay BDO ₱32,543,856.33 plus 12% interest per annum from the time of the filing of the complaint until fully paid and attorney's fees. The Makati RTC decision was published on June 9, 2008.

On August 20, 2008, the Makati RTC issued a Writ of Execution upon BDO's motion. The Order states that in the event that the judgment obligors cannot pay all or part of the obligation, the sheriff shall levy upon the properties of the defendants to satisfy the award.

On October 28, 2008, the Makati RTC's sheriff filed a Report stating that he tried to serve the Writ of Execution upon the defendants at Fumakilla Compound but he was not able to do so since the defendants were no longer holding office thereat. The Sheriff also reported that, on the same day, he went to the subject property to serve the execution but likewise failed in his attempt since Carmelita was no longer residing at the said address.

On November 11, 2008, BDO filed a Motion to Conduct Auction of the subject property. The motion was granted by the Makati RTC on May 5, 2009 so that the subject property was sold to BDO, as the highest bidder, on October 6, 2009.

Following the discovery of the sale of their property, Eliseo executed an affidavit of adverse claim and, on January 21, 2013, filed a Complaint for Annulment of Surety Agreements, Notice of Levy on Attachment, Auction Sale and Other Documents,

docketed as CC No. 73761, with the Regional Trial Court of Pasig City (Pasig RTC).[1]

He alleged in his Complaint that the subject property is a family home that belongs to the conjugal partnership of gains he established with his wife. He further averred that the alleged surety agreements upon which the attachment of the property was anchored were signed by his wife without his consent and did not redound to benefit their family. Thus, he prayed that the surety agreements and all other documents and processes, including the ensuing attachment, levy and execution sale, based thereon be nullified.

BDO filed a Motion to Dismiss the Complaint, asserting that the Pasig RTC has no jurisdiction to hear Eliseo's Complaint, the case was barred by *res judicata* given the Decision and orders of the Makati RTC, and, finally, the Complaint failed to state a cause of action.

In an Order dated May 31, 2013, the Pasig RTC dismissed the case citing lack of jurisdiction. The RTC held that it could not pass upon matters already brought before the RTC Makati and, citing *Spouses Ching v. Court of Appeals*,[2] the husband of a judgment debtor is not a stranger to a case who can file a separate and independent action to determine the validity of the levy and sale of a property.

On a motion for reconsideration filed by Eliseo, the Pasig RTC reinstated the case with qualification. Relying on *Buado v. Court of Appeals*,[3] the Pasig RTC held that since majority of Eliseo's causes of action were premised on a claim that the obligation contracted by his wife has not redounded to their family, and, thus, the levy on their property was illegal, his filing of a separate action is not an encroachment on the jurisdiction of the Makati RTC, which ordered the attachment and execution in the first place.

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[1] The Complaint was raffled to Branch 155 of the Pasig RTC.

[2] G.R. No. 118830, February 24, 2003, 398 SCRA 88.

[3] G.R. No. 145222, April 24, 2009, 586 SCRA 396.

The Pasig RTC clarified, however, that it cannot annul the surety agreements supposedly signed by Carmelita since Eliseo was not a party to those agreements and the validity and efficacy of these contracts had already been decided by the Makati RTC.

Both Eliseo and BDO referred the Pasig RTC's Decision to the Court of Appeals (CA).

In its petition, docketed as CA-G.R. SP No. 133994, BDO contended that it was an error for the Pasig RTC to apply *Buado* as it does not apply squarely to the circumstances of the case and has not superseded *Ching*. BDO maintained that by reinstating the complaint, Pasig RTC has violated the rule prohibiting non-interference by one court with the orders of a co-equal court.

In its January 20, 2015 Decision,[4] the appellate court granted BDO's petition and ordered the Pasig RTC to cease from hearing CC No. 73761 commenced by Eliseo. In so ruling, the CA held that Eliseo is not a stranger who can initiate an action independent from the case where the attachment and execution sale were ordered. Thus, the CA concluded that in opting to review the validity of the levy and execution sale of the subject property pursuant to the judgment of the Makati RTC, the Pasig RTC acted without jurisdiction.

Eliseo moved for, but was denied, reconsideration by the appellate court. Hence, he came to this Court via a Petition for Review on Certiorari under Rule 45 of the Rules of Court, docketed as **G.R. No. 218540**.

On August 19, 2015, the Court issued a Resolution denying Eliseo's petition. Eliseo begs to differ and takes exception from the said holding in his motion for reconsideration dated October 5, 2015, which is presently for Resolution by this Court.

Meanwhile, on an *ex-parte* omnibus motion filed by BDO, the Makati RTC ordered the issuance of a Writ of Possession

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[4] Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Rebecca Guia-Salvador and Ramon A. Cruz.

and the issuance of a new TCT covering the subject property in favor of the respondent bank.

Arguing that the Makati RTC had not acquired jurisdiction over her person as the service of the summons and the other processes of the court was defective, Carmelita filed a Petition for Annulment of Judgment (With Urgent Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction) with the CA, docketed as CA-G.R. SP No. 134664.

Before the CA can act on the Petition for Annulment, the Borlongans found posted on the subject property a Writ of Possession dated August 1, 2014 and a Notice to Vacate dated August 29, 2014.

In its Resolution dated November 12, 2014,[5] the appellate court denied Carmelita's prayer for the issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction (WPI).

Aggrieved, Carmelita interposed a motion for the reconsideration of the CA's November 12, 2014 Resolution. On March 23, 2015, however, the appellate court denied her motion for reconsideration, holding that "upon the expiration of the redemption period, the right of the purchaser to the possession of the foreclosed property becomes absolute."

Thus, on April 27, 2015, Carmelita filed a Petition for Review, docketed as **G.R. No. 217617**, before this Court, ascribing to the appellate court the commission of serious reversible errors. The Court denied the petition on June 22, 2015. Hence, on September 1, 2015, Carmelita interposed a Motion for Reconsideration urging the Court to take a second hard look at the facts of the case and reconsider its stance.

Considering that both cases originated from the same facts and involved interrelated issues, on January 25, 2016, the Court resolved to consolidate G.R. No. 218540 with G.R. No. 217617.

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[5] Penned by Associate Justice Eduardo B. Peralta and concurred in by Associate Justices Magdangal M. De Leon and Stephen C. Cruz.

Issues

The question posed in G.R. No. 217617 is whether or not the CA erred in refusing to issue a TRO and/or WPI stopping the consolidation of BDO's ownership over the subject property. On the other hand, the issue in G.R. No. 218540 revolves around whether the Pasig RTC has jurisdiction to hear and decide a case filed by the non-debtor husband to annul the levy and execution sale of the subject property ordered by the Makati RTC against his wife.

Our Ruling

A reexamination of the antecedents and arguments in G.R. Nos. 217617 and 218540 compels the reversal of the appellate court's resolutions in both cases.

G.R. No. 217617

The Issuance of a TRO/WPI is not a prejudgment of the main case

On the propriety of CA's refusal to issue a TRO/WPI, it is worthy to note that Section 3, Rule 58 of the Rules of Court provides the grounds for the issuance of a preliminary injunction, viz:

> Section 3. Grounds for issuance of preliminary injunction. — A preliminary injunction may be granted when it is established:
>
> (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts either for a limited period or perpetually;
>
> (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
>
> (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

From the foregoing provision, it is clear that a writ of preliminary injunction is warranted where there is a showing that there exists a right to be protected and that the acts against which the writ is to be directed violate an established right. Otherwise stated, for a court to decide on the propriety of issuing a TRO and/or a WPI, it must only inquire into the existence of two things: (1) a clear and unmistakable right that must be protected; and (2) an urgent and paramount necessity for the writ to prevent serious damage.

In ***Levi Strauss (Phils.) Inc. v. Vogue Traders Clothing Company***,[6] the Court already explained that the issuance of a TRO is not conclusive of the outcome of the case as it requires but a sampling of the evidence, *viz*:

> Indeed, a writ of preliminary injunction is generally based solely on initial and incomplete evidence adduced by the applicant (herein petitioner). **The evidence submitted during the hearing of the incident is not conclusive, for only a "sampling" is needed to give the trial court an idea of the justification for its issuance pending the decision of the case on the merits.** As such, the findings of fact and opinion of a court when issuing the writ of preliminary injunction are interlocutory in nature. Moreover, **the sole object of a preliminary injunction is to preserve the status quo until the merits of the case can be heard.** Since Section 4 of Rule 58 of the Rules of Civil Procedure gives the trial courts sufficient discretion to evaluate the conflicting claims in an application for a provisional writ which often involves a factual determination, the appellate courts generally will not interfere in the absence of manifest abuse of such discretion. **A writ of preliminary injunction would become a prejudgment of a case only when it grants the main prayer in the complaint or responsive pleading**, so much so that there is nothing left for the trial court to try except merely incidental matters. (emphasis supplied)

Notably, the primary prayer of the Petition for Annulment before the appellate court is the declaration of the nullity of the proceedings in the RTC and its Decision dated November 29, 2007; it is not merely confined to the prevention of the issuance

[6] G.R. No. 132993, June 29, 2005, 462 SCRA 52.

of the writ of possession and the consolidation of the ownership of the subject property in BDO's name––the concerns of the prayer for the TRO and/or WPI.

Indeed, the petitioner's prayer for the issuance of a TRO and/or WPI was intended to preserve the *status quo ante*,[7] and not to pre-empt the appellate court's decision on the merits of her petition for annulment. Thus, it was a grievous error on the part of the CA to deny her of this provisional remedy.

The appellate court's error is readily apparent given the stark existence of the grounds for the issuance of a writ of preliminary injunction.

On the first ground, petitioner has a clear and unmistakable right that must be protected. This right is not just her proprietary rights over the subject property but her **constitutionally protected right to due process** before she can be deprived of her property. No less than Section 1 of the Bill of Rights of the 1987 Constitution mandates 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 laws. (emphasis supplied)

In its classic formulation, due process means that any person with interest to the thing in litigation **must be notified** and **given an opportunity to defend** that interest.[8] Thus, as the essence of due process lies in the reasonable opportunity to be heard and to submit any evidence the defendant may have in support of her defense, **she must be properly served the summons of the court**. In other words, the service of summons is a vital and indispensable ingredient of due process[9] and compliance with the rules regarding the service of the summons

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[7] *Los Baños Rural Bank, Inc. v. Africa*, G.R. No. 143994, July 11, 2002, 384 SCRA 535.

[8] *De Pedro v. Romasan Development Corporation*, G.R. No. 194751, November 26, 2014, 743 SCRA 52.

[9] *Chu v. Mach Asia Trading Corporation*, G.R. No. 184333, April 1, 2013, 694 SCRA 302.

is as much an issue of due process as it is of jurisdiction.[10] Unfortunately, as will be discussed, it would seem that the Constitutional right of the petitioner to be properly served the summons and be notified has been disregarded by the officers of the trial court.

At this very juncture, the existence of the second ground for the issuance of a TRO and/or WPI is self-evident. **Without a TRO and/or WPI** enjoining the respondent bank from continuing in the possession and consolidating the ownership of the subject property, petitioner's **right to be afforded due process will unceasingly be violated**.

It need not be stressed that a continuous violation of constitutional rights is by itself a grave and irreparable injury that this or any court cannot plausibly tolerate.

Without a doubt, the appellate court should have acted intrepidly and issued the TRO and/or WPI posthaste to protect the constitutional rights of petitioner, as it is duty-bound to do.

The performance of official duty was not regular

Regrettably, the appellate court fell short in the fulfillment of its mandate and instead relied on the disputable presumption that "official duty has been regularly performed." The Court cannot subscribe to the position taken by the appellate court.

As a rule, **summons should be personally served on a defendant**. When summons cannot be served personally within a reasonable period of time, substituted service may be resorted to. Service of summons by publication can be resorted to only if the defendant's "whereabouts are unknown and cannot be ascertained by diligent inquiry." The relevant sections of Rule 14 of the Rules of Court provide, thus:

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[10] *Samartino v. Raon*, G.R. No. 131482, July 3, 2002, 383 SCRA 664, 670.

SEC. 6. Service in person on defendant. – Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

SEC. 7. Substituted service. – If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

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SEC. 14. Service upon defendant whose identity or whereabouts are unknown. – In any action where the defendant is designated as an unknown owner, or the like, or whenever his whereabouts are unknown and cannot be ascertained by diligent inquiry, service may, by leave of court, be effected upon him by publication in a newspaper of general circulation and in such places and for such time as the court may order.

It is, therefore, proper to state that the hierarchy and rules in the service of summons are as follows:

(1) Personal service;

(2) Substituted service, if for justifiable causes the defendant cannot be served within a reasonable time; and

(3) Service by publication, whenever the defendant's whereabouts are unknown and cannot be ascertained by diligent inquiry.

Simply put, personal service of summons is the preferred mode. And, the rules on the service of summons other than by personal service **may be used *only* as prescribed and *only* in the circumstances authorized by statute.** Thus, **the *impossibility* of prompt personal service must be shown** by stating that efforts have been made to find the defendant personally and that such efforts have failed before substituted

service may be availed.[11] Furthermore, their rules must be followed strictly, faithfully and fully as they are extraordinary in character and considered in derogation of the usual method of service.

In ***Manotoc v. Court of Appeals***,[12] the Court enumerated and explained the requirements to effect a valid service of summons other than by personal service, viz:

(1) **Impossibility of Prompt Personal Service**

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Sheriffs are asked to discharge their duties on the service of summons with due care, utmost diligence, and reasonable promptness and speed so as not to prejudice the expeditious dispensation of justice. Thus, they are enjoined to try their best efforts to accomplish personal service on defendant. On the other hand, since the defendant is expected to try to avoid and evade service of summons, the sheriff must be resourceful, persevering, canny, and diligent in serving the process on the defendant. **For substituted service of summons to be available, there must be several attempts by the sheriff to personally serve the summons within a reasonable period [of one month] which eventually resulted in failure to prove impossibility of prompt service. "Several attempts" means at least three (3) tries, preferably on at least two different dates. In addition, the sheriff must cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted.**

(2) **Specific Details in the Return**

The sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service. The efforts made to find the defendant and the reasons behind the failure must be clearly narrated in detail in the Return. The date and time of the attempts on personal service, the inquiries made

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[11] *Chu v. Mach Asia Trading Corporation*, *supra* note 9; citing *Casimina v. Legaspi*, 500 Phil. 560, 569 (2005) and *B.D. Long Span Builders, Inc. v. R.S. Ampeloquio Realty Development, Inc.*, G.R. No. 169919, September 11, 2009, 599 SCRA 468, 474-475. See also *Manotoc v. Court of Appeals*, G.R. No. 130974, August 16, 2006, 499 SCRA 21.

[12] *Supra* note 11.

to locate the defendant, the name/s of the occupants of the alleged residence or house of defendant and all other acts done, though futile, to serve the summons on defendant must be specified in the Return to justify substituted service. The form on Sheriff's Return of Summons on Substituted Service prescribed in the Handbook for Sheriffs published by the Philippine Judicial Academy requires a narration of the efforts made to find the defendant personally and the fact of failure. Supreme Court Administrative Circular No. 5 dated November 9, 1989 requires that "**impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the failure of such efforts," which should be made in the proof of service.**

In the case now before Us, the summons was served on the petitioner by **publication**. Yet, the circumstances surrounding the case do not justify the resort.

Consider: in July 2003, the sheriff attempted to serve the summons on the defendants, including petitioner Carmelita, at Fumakilla Compound, i.e., at the property already foreclosed, acquired, and possessed by the respondent bank as early as August 2001. Immediately after this ***single attempt*** at personal service in July 2003, the respondent bank moved in October 2003 for leave to serve the summons by publication (and not even substituted service), which motion the RTC granted.

Clearly, **there was no diligent effort** made to find the petitioner and properly serve her the summons before the service by publication was allowed. Neither was it impossible to locate the residence of petitioner and her whereabouts.

It should be noted that the principal obligor in CC No. 03-0713 was Tancho Corporation and petitioner Carmelita was impleaded only because she supposedly signed a surety agreement as a director. As a juridical person, Tancho Corporation is required to file mandatory corporate papers with the Securities and Exchange Commission (SEC), such as its General Information Sheet (GIS). In 1997 and 2000, the GIS filed by Tancho Corporation with the SEC provided the names of its directors and their addresses. One of these directors included petitioner Carmelita with her address listed at 41 Chicago St.,

Quezon City. The GIS of Tancho Corporation was readily available to the public including the RTC's process server and respondent bank.

Patently, it cannot be plausibly argued that it was impossible to find the petitioner and personally serve her with summons. In like manner, it can hardly be stated that the process server regularly performed his duty.

The subject property was not *foreclosed* by the respondent bank; right of BDO to the possession of the subject property is questionable

Still unwilling to issue the TRO and/or WPI fervently prayed for by petitioner, the appellate court held that "upon the expiration of the redemption period, the right of the purchaser to the possession of the foreclosed property becomes absolute." This Court cannot affirm the appellate court's ruling.

At the outset, it must be pointed out that the subject property was never mortgaged to, much less foreclosed by, the respondent bank. Thus, it was error for the CA to refer to the subject property as "foreclosed property."

Rather, as disclosed by the records, the possession of the subject property was acquired by BDO through attachment and later by execution sale. However, it is presumptive to state that the right of BDO over the possession of the subject property is now absolute considering that there is an action that questions the validity of the bank's acquisition over the same property.

In ***Cometa v. Intermediate Appellate Court***,[13] we explained that the expiration of the redemption period does not automatically vest in the auction purchaser an absolutely possessory right over the property, viz:

From the foregoing discussion, it can be seen that the writ of possession may issue in favor of a purchaser in an execution sale when the deed of conveyance has been executed and delivered to

[13] No. 69294, June 30, 1987, 151 SCRA 563.

him after the period of redemption has expired and no redemption has been made by the judgment debtor.

A writ of possession is complementary to a writ of execution (see Vda. de Bogacki v. Inserto, 111 SCRA 356, 363), and in an execution sale, it is a consequence of a writ of execution, a public auction sale, and the fulfillment of several other conditions for conveyance set by law. The issuance of a writ of possession is dependent on the valid execution of the procedural stages preceding it. Any flaw afflicting any of its stages, therefore, could affect the validity of its issuance.

In the case at bar, **the validity of the levy and sale of the properties is directly put in issue in another case by the petitioners**. This Court finds it an issue which requires pre-emptive resolution. For **if the respondent acquired no interest in the property by virtue of the levy and sale, then, he is not entitled to its possession.**

The respondent appellate court's emphasis on the failure of The petitioner to redeem the properties within the period required by law is misplaced because **redemption,** in this case, **is inconsistent with the petitioner's claim of invalidity of levy and sale. Redemption is an implied admission of the regularity of the sale and would estop the petitioner from later impugning its validity on that ground.** (emphasis supplied)

Thus, even given the expiration of the redemption period, a TRO and/or WPI is still obtainable and warranted where the validity of the acquisition of the possession is afflicted by Constitutional and procedural infirmities.

G.R. No. 218540

Eliseo can file an independent action for the annulment of the attachment of their conjugal property

As to the question of the Pasig RTC's jurisdiction to hear Eliseo's complaint, we cannot subscribe to BDO's contention that Eliseo cannot file a separate and independent action for the annulment of the levy on their conjugal property.

Section 16, Rule 39 of the Rules of Court allows third-party claimants of properties under execution to vindicate their claims to the property in a separate action with another court. It states, thus:

SECTION 16. *Proceedings Where Property Claimed by Third Person.* — If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. **Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action,** or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim. (emphasis supplied)

Clearly, the availability of the remedy provided under the foregoing provision requires only that that the claim is a third-party or a "stranger" to the case. The poser then is this: is the husband, who was not a party to the suit but whose conjugal property was executed on account of the other spouse's debt, a "stranger" to the suit? In *Buado v. Court of Appeals*,[14] this Court had the opportunity to clarify that, to resolve the issue, it must first be determined whether the debt had redounded to the benefit of the conjugal partnership or not. In the negative, the spouse is a stranger to the suit who can file an independent separate action, distinct from the action in which the writ was issued. We held, thus:

A third-party claim must be filed [by] a person other than the judgment debtor or his agent. In other words, only a stranger to the case may file a third-party claim.

[14] *Supra* note 3.

This leads us to the question: Is the husband, who was not a party to the suit but whose conjugal property is being executed on account of the other spouse being the judgment obligor, considered a "stranger?"

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Pursuant to *Mariano* however, **it must further be settled whether the obligation of the judgment debtor redounded to the benefit of the conjugal partnership or not.**

Petitioners argue that the obligation of the wife arising from her criminal liability is chargeable to the conjugal partnership. We do not agree.

There is no dispute that contested property is conjugal in nature. Article 122 of the Family Code explicitly provides that payment of personal debts contracted by the husband or the wife before or during the marriage shall not be charged to the conjugal partnership except insofar as they redounded to the benefit of the family.

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Parenthetically, by no stretch of imagination can it be concluded that the civil obligation arising from the crime of slander committed by Erlinda redounded to the benefit of the conjugal partnership.

To reiterate, **conjugal property cannot be held liable for the personal obligation contracted by one spouse, unless some advantage or benefit is shown to have accrued to the conjugal partnership**.

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Hence, the filing of a separate action by respondent is proper and jurisdiction is thus vested on Branch 21. (emphasis supplied)

In the present case, it is not disputed that the conjugal property was attached on the basis of **a surety agreement** allegedly signed by Carmelita for and in behalf of Tancho Corporation. In our 2004 Decision in *Spouses Ching v. Court of Appeals*,[15] we elucidated that **there is no presumption that the conjugal partnership is benefited when a spouse enters into a contract of surety**, holding thusly:

In this case, the private respondent failed to prove that the conjugal partnership of the petitioners was benefited by the petitioner-husband's act of executing a continuing guaranty and suretyship agreement with

[15] G.R. No. 124642, February 23, 2004.

the private respondent for and in behalf of PBMCI. The contract of loan was between the private respondent and the PBMCI, solely for the benefit of the latter. **No presumption can be inferred from the fact that when the petitioner-husband entered into an accommodation agreement or a contract of surety, the conjugal partnership would thereby be benefited. The private respondent was burdened to establish that such benefit redounded to the conjugal partnership.**

It could be argued that the petitioner-husband was a member of the Board of Directors of PBMCI and was one of its top twenty stockholders, and that the shares of stocks of the petitioner-husband and his family would appreciate if the PBMCI could be rehabilitated through the loans obtained; that the petitioner-husband's career would be enhanced should PBMCI survive because of the infusion of fresh capital. However, these are not the benefits contemplated by Article 161 of the New Civil Code. **The benefits must be those directly resulting from the loan. They cannot merely be a by-product or a spin-off of the loan itself.**

This is different from the situation where the husband borrows money or receives services to be used for his own business or profession. In the Ayala case, we ruled that it is such a contract that is one within the term "obligation for the benefit of the conjugal partnership." Thus:

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The Court held in the same case that the rulings of the Court in *Cobb-Perez* and *G-Tractors, Inc.* are not controlling because the husband, in those cases, contracted the obligation for his own business. In this case, the petitioner-husband acted merely as a surety for the loan contracted by the PBMCI from the private respondent. (emphasis supplied)

Furthermore, it is not apparent from the records of this case that BDO had established the benefit to the conjugal partnership flowing from the surety agreement allegedly signed by Carmelita. Thus, Eliseo's claim over the subject property lodged with the RTC Pasig is proper, with the latter correctly exercising jurisdiction thereon.

Besides, BDO's reliance on *Spouses Ching v. Court of Appeals*[16] (2003) is improper. In the present case, Eliseo and his wife discovered the attachment of their conjugal property only after the finality of the decision by the RTC Makati. There was, therefore,

[16] *Supra* note 2.

no opportunity for Eliseo to intervene in the case before the RTC Makati which attached the conjugal property, as a motion to intervene can only be filed "at any time before rendition of judgment by the trial court."[17] This spells the whale of difference between the case at bar and the earlier *Spouses Ching*. Unlike in the present case, the debtor in the case cited by BDO was properly informed of the collection suit and his spouse had the opportunity to question the attachment of their conjugal property before the court that issued the levy on attachment, but simply refused to do so. Thus, to now deny Eliseo the opportunity to question the attachment made by the RTC Makati in a separate and independent action will be to, again, refuse him the due process of law before their property is taken. As this Court is duty-bound to protect and enforce Constitutional rights, this we cannot allow.

WHEREFORE, the petitions are **GRANTED.**

(1) The January 20, 2015 Decision and May 26, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 133994 are hereby **REVERSED** and **SET ASIDE**. The Regional Trial Court of Pasig, Branch 155 is ordered to continue with the proceedings and decide Civil Case No. 73761 with reasonable dispatch.

(2) The November 12, 2014 and March 23, 2015 Resolutions of the appellate court in CA-G.R. SP No. 134664 are **REVERSED** and **SET ASIDE**.

Accordingly, let a Temporary Restraining Order (TRO) be issued enjoining, prohibiting, and preventing respondent Banco De Oro, its assigns, transferees, successors, or any and all other persons acting on its behalf from possessing, selling, transferring, encumbering or otherwise exercising acts of ownership over the property subject of the controversy. Said TRO shall remain valid and effective until such time as the rights and interests of the parties in CA-G.R. SP No. 134664 shall have been determined and finally resolved.

SO ORDERED.

Peralta, Reyes, Jardeleza, and *Tijam, JJ.,* concur.

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[17] RULES of Court, Rule 19, Section 2.

THIRD DIVISION

[G.R. No. 222743. April 5, 2017]

MEDICARD PHILIPPINES, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; TAX REMEDIES; A LETTER OF AUTHORITY (LOA) ISSUED BY THE COMMISSIONER OF INTERNAL REVENUE (CIR) OR HIS DULY AUTHORIZED REPRESENTATIVE IS NECESSARY BEFORE ANY INVESTIGATION OR EXAMINATION OF THE TAXPAYER MAY BE CONDUCTED.— An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. x x x Based on [Section 6 of NICR], it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.

2. ID.; ID.; ID.; LETTER NOTICE (LN) CANNOT TAKE THE PLACE OF LOA; LN AND LOA, DISTINGUISHED.— The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF

system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal remedies, particularly closure, criminal action, or audit and investigation. Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns. The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 120 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. Simply put, LN is entirely different and serves a different purpose than an LOA. Due process demands, as recognized under RMO No. 32-2005, that after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case.

3. ID.; ID.; ID.; AN EXAMINATION WITHOUT PRIOR LOA VIOLATES TAXPAYER'S RIGHT TO DUE PROCESS AND ANY ASSESSMENT ISSUED PURSUANT THERETO IS INESCAPABLY VOID; RATIONALE OF LOA REQUIREMENT.— Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination. The BIR's RELIEF System has admittedly made

the BIR's assessment and collection efforts much easier and faster. The ease by which the BIR's revenue generating objectives is achieved is no excuse however for its non-compliance with the statutory requirement under Section 6 and with its own administrative issuance. In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute. That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.

4. ID.; VALUE-ADDED TAX (VAT); THE AMOUNTS EARMARKED AND EVENTUALLY PAID BY PETITIONER TO THE MEDICAL SERVICE PROVIDERS DO NOT FORM PART OF GROSS RECEIPTS FOR VAT PURPOSES.— For this Court to subject the entire amount of MEDICARD's gross receipts without exclusion, the authority should have been reasonably founded from the language of the statute. That language is wanting in this case. In the scheme of judicial tax administration, the need for certainty and predictability in the implementation of tax laws is crucial. Our tax authorities fill in the details that Congress may not have the opportunity or competence to provide. The regulations these authorities issue are relied upon by taxpayers, who are certain that these will be followed by the courts. Courts, however, will not uphold these authorities' interpretations when clearly absurd, erroneous or improper. The CIR's interpretation of gross receipts

in the present case is patently erroneous for lack of both textual and non-textual support. As to the CIR's argument that the act of earmarking or allocation is by itself an act of ownership and management over the funds, the Court does not agree. On the contrary, it is MEDICARD's act of earmarking or allocating 80% of the amount it received as membership fee at the time of payment that weakens the ownership imputed to it. By earmarking or allocating 80% of the amount, MEDICARD unequivocally recognizes that its possession of the funds is not in the concept of owner but as a mere administrator of the same. For this reason, at most, MEDICARD's right in relation to these amounts is a mere inchoate owner which would ripen into actual ownership if, and only if, there is underutilization of the membership fees at the end of the fiscal year. Prior to that, MEDICARD is bound to pay from the amounts it had allocated as an administrator once its members avail of the medical services of MEDICARD's healthcare providers. Before the Court, the parties were one in submitting the legal issue of whether the amounts MEDICARD earmarked, corresponding to 80% of its enrollment fees, and paid to the medical service providers should form part of its gross receipt for VAT purposes, after having paid the VAT on the amount comprising the 20%. It is significant to note in this regard that MEDICARD established that upon receipt of payment of membership fee it actually issued two official receipts, one pertaining to the VATable portion, representing compensation for its services, and the other represents the non-vatable portion pertaining to the amount earmarked for medical utilization. Therefore, the absence of an actual and physical segregation of the amounts pertaining to two different kinds of fees cannot arbitrarily disqualify MEDICARD from rebutting the presumption under the law and from proving that indeed services were rendered by its healthcare providers for which it paid the amount it sought to be excluded from its gross receipts. x x x The Court likewise rules that for purposes of determining the VAT liability of an HMO, the amounts earmarked and actually spent for medical utilization of its members should not be included in the computation of its gross receipts.

APPEARANCES OF COUNSEL

Divina Law for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

REYES, *J.*:

This appeal by Petition for Review[1] seeks to reverse and set aside the Decision[2] dated September 2, 2015 and Resolution[3] dated January 29, 2016 of the Court of Tax Appeals (CTA) *en banc* in CTA EB No. 1224, affirming with modification the Decision[4] dated June 5, 2014 and the Resolution[5] dated September 15, 2014 in CTA Case No. 7948 of the CTA Third Division, ordering petitioner Medicard Philippines, Inc. (MEDICARD), to pay respondent Commissioner of Internal Revenue (CIR) the deficiency Value-Added Tax (VAT) assessment in the aggregate amount of ₱220,234,609.48, plus 20% interest *per annum* starting January 25, 2007, until fully paid, pursuant to Section 249(c)[6] of the National Internal Revenue Code (NIRC) of 1997.

The Facts

MEDICARD is a Health Maintenance Organization (HMO) that provides prepaid health and medical insurance coverage

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[1] *Rollo*, pp. 187-231.

[2] Penned by Associate Justice Juanito C. Castañeda; *id*. at 13-45.

[3] *Id.* at 46-59; Presiding Justice Roman G. Del Rosario with Concurring and Dissenting Opinion, joined by Associate Justice Erlinda P. Uy.

[4] Penned by Associate Justice Ma. Belen M. Ringpis-Liban, with Associate Justices Lovell R. Bautista and Esperanza R. Fabon-Victorino concurring; *id*. at 124-174.

[5] *Id.* at 175-178.

[6] **SEC. 249. Interest. -**

x x x x x x x x x

(C) Delinquency Interest. - In case of failure to pay:

(1) The amount of the tax due on any return to be filed, or

(2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

to its clients. Individuals enrolled in its health care programs pay an annual membership fee and are entitled to various preventive, diagnostic and curative medical services provided by duly licensed physicians, specialists and other professional technical staff participating in the group practice health delivery system at a hospital or clinic owned, operated or accredited by it.[7]

MEDICARD filed its First, Second, and Third Quarterly VAT Returns through Electronic Filing and Payment System (EFPS) on April 20, 2006, July 25, 2006 and October 20, 2006, respectively, and its Fourth Quarterly VAT Return on January 25, 2007.[8]

Upon finding some discrepancies between MEDICARD's Income Tax Returns (ITR) and VAT Returns, the CIR informed MEDICARD and issued a Letter Notice (LN) No. 122-VT-06-00-00020 dated September 20, 2007. Subsequently, the CIR also issued a Preliminary Assessment Notice (PAN) against MEDICARD for deficiency VAT. A Memorandum dated December 10, 2007 was likewise issued recommending the issuance of a Formal Assessment Notice (FAN) against MEDICARD.[9]

On January 4, 2008, MEDICARD received CIR's FAN dated December 10, 2007 for alleged deficiency VAT for taxable year 2006 in the total amount of ₱196,614,476.69,[10]

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[7] *Rollo*, p. 190.

[8] *Id*. at 15.

[9] *Id*. at 15-16.

[10]

Receivable from members, beginning		[₱]45,265,483.00
Add/Deduct Adjustments		
1. Membership fees for the year	[₱]1,956,016,629.00	
2. Administrative service fees	3,388,889.00	
3. Professional fees	11,522,346.00	
4. Processing fees	11,008,809.00	
5. Rental income	119,942.00	

inclusive of penalties.[11]

According to the CIR, the taxable base of HMOs for VAT purposes is its gross receipts without any deduction under Section 4.108.3(k) of Revenue Regulation (RR) No. 16-2005. Citing *Commissioner of Internal Revenue v. Philippine Health Care Providers, Inc.*,[12] the CIR argued that since MEDICARD does not actually provide medical and/or hospital services, but merely arranges for the same, its services are not VAT exempt.[13]

MEDICARD argued that: (1) the services it render is not limited merely to arranging for the provision of medical and/or hospital services by hospitals and/or clinics but include actual and direct rendition of medical and laboratory services; in fact, its 2006 audited balance sheet shows that it owns x-ray and laboratory facilities which it used in providing medical and laboratory services to its members;

6. Unearned fees, ending	405,616,650.00	2,387,673,265.00
		2,432,938,748.00
Less: Receivable from members, ending	85,189,221.00	
Unearned fees, beginning	412,184,856.00	497,374,077.00
Gross receipts subject to VAT		1,935,564,671.00
VAT Rate		12%
Output tax due		207,381,929.04
Less: Input tax		25,794,078.24
VAT payable		181,587,850.80
Less: VAT payments		15,816,053.22
VAT payable		165,771,797.58
Add: Increment		
Surcharge		
Interest (1-26-07 to 12-31-07 or 339 days)	30,792,679.11	
Compromise penalty	50,000.00	30,842,679.11
Total Deficiency VAT Payable		[₱]196,614,476.69

[11] *Rollo*, p. 16.

[12] 550 Phil. 304 (2007).

[13] *Rollo,* pp. 16-17.

(2) out of the ₱1.9 Billion membership fees, ₱319 Million was received from clients that are registered with the Philippine Export Zone Authority (PEZA) and/or Bureau of Investments; (3) the processing fees amounting to ₱11.5 Million should be excluded from gross receipts because ₱5.6 Million of which represent advances for professional fees due from clients which were paid by MEDICARD while the remainder was already previously subjected to VAT; (4) the professional fees in the amount of ₱11 Million should also be excluded because it represents the amount of medical services actually and directly rendered by MEDICARD and/or its subsidiary company; and (5) even assuming that it is liable to pay for the VAT, the 12% VAT rate should not be applied on the entire amount but only for the period when the 12% VAT rate was already in effect, *i.e.*, on February 1, 2006. It should not also be held liable for surcharge and deficiency interest because it did not pass on the VAT to its members.[14]

On February 14, 2008, the CIR issued a Tax Verification Notice authorizing Revenue Officer Romualdo Plocios to verify the supporting documents of MEDICARD's Protest. MEDICARD also submitted additional supporting documentary evidence in aid of its Protest thru a letter dated March 18, 2008.[15]

On June 19, 2009, MEDICARD received CIR's Final Decision on Disputed Assessment dated May 15, 2009, denying MEDICARD's protest, to wit:

> **IN VIEW HEREOF**, we deny your letter protest and hereby reiterate in toto assessment of deficiency [VAT] in total sum of ₱196,614,476.99. It is requested that you pay said deficiency taxes immediately. Should payment be made later, adjustment has to be made to impose interest until date of payment. This is our final decision. If you disagree, you may take an appeal to the [CTA] within the period provided by law, otherwise, said assessment shall become final, executory and demandable.[16]

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

[15] *Id*. at 20.

[16] *Id*.

On July 20, 2009, MEDICARD proceeded to file a petition for review before the CTA, reiterating its position before the tax authorities.[17]

On June 5, 2014, the CTA Division rendered a Decision[18] affirming with modifications the CIR's deficiency VAT assessment covering taxable year 2006, *viz.*:

WHEREFORE, premises considered, the deficiency VAT assessment issued by [CIR] against [MEDICARD] covering taxable year 2006 is hereby **AFFIRMED WITH MODIFICATIONS**. Accordingly, [MEDICARD] is ordered to pay [CIR] the amount of ₱223,173,208.35, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Basic Deficiency VAT	₱178,538,566.68
Add: 25% Surcharge	44,634,641.67
Total	**₱223,173,208.35**

In addition, [MEDICARD] is ordered to pay:

a. Deficiency interest at the rate of twenty percent (20%) per annum on the basis deficiency VAT of ₱178,538,566.68 computed from January 25, 2007 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

b. Delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱223,173,208.35 representing basic deficiency VAT of ₱178,538,566.68 and 25% surcharge of ₱44,634,641.67 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from June 19, 2009 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED.[19]

The CTA Division held that: (1) the determination of deficiency VAT is not limited to the issuance of Letter

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[17] *Id*.

[18] *Id*. at 124-174.

[19] *Id*. at 173.

of Authority (LOA) alone as the CIR is granted vast powers to perform examination and assessment functions; (2) in lieu of an LOA, an LN was issued to MEDICARD informing it of the discrepancies between its ITRs and VAT Returns and this procedure is authorized under Revenue Memorandum Order (RMO) No. 30-2003 and 42-2003; (3) MEDICARD is estopped from questioning the validity of the assessment on the ground of lack of LOA since the assessment issued against MEDICARD contained the requisite legal and factual bases that put MEDICARD on notice of the deficiencies and it in fact availed of the remedies provided by law without questioning the nullity of the assessment; (4) the amounts that MEDICARD earmarked and eventually paid to doctors, hospitals and clinics cannot be excluded from the computation of its gross receipts under the provisions of RR No. 4-2007 because the act of earmarking or allocation is by itself an act of ownership and management over the funds by MEDICARD which is beyond the contemplation of RR No. 4-2007; (5) MEDICARD's earnings from its clinics and laboratory facilities cannot be excluded from its gross receipts because the operation of these clinics and laboratory is merely an incident to MEDICARD's main line of business as an HMO and there is no evidence that MEDICARD segregated the amounts pertaining to this at the time it received the premium from its members; and (6) MEDICARD was not able to substantiate the amount pertaining to its January 2006 income and therefore has no basis to impose a 10% VAT rate.[20]

Undaunted, MEDICARD filed a Motion for Reconsideration but it was denied. Hence, MEDICARD elevated the matter to the CTA *en banc*.

In a Decision[21] dated September 2, 2015, the CTA *en banc* partially granted the petition only insofar as the 10% VAT rate for January 2006 is concerned but sustained the findings of the CTA Division in all other matters, thus:

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[20] *Id*. at 153-170.

[21] *Id*. at 13-45.

WHEREFORE, in view thereof, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the Decision dated June 5, 2014 is hereby **MODIFIED**, as follows:

"**WHEREFORE**, premises considered, the deficiency VAT assessment issued by [CIR] against [MEDICARD] covering taxable year 2006 is hereby **AFFIRMED WITH MODIFICATIONS**. Accordingly, [MEDICARD] is ordered to pay [CIR] the amount of ₱220,234,609.48, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Basic Deficiency VAT	₱176,187,687.58
Add: 25% Surcharge	44,046,921.90
Total	**₱ 220,234,609.48**

In addition, [MEDICARD] is ordered to pay:

(a) Deficiency interest at the rate of 20% per annum on the basic deficiency VAT of ₱176,187,687.58 computed from January 25, 2007 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱220,234,609.48 (representing basic deficiency VAT of ₱176,187,687.58 and 25% surcharge of ₱44,046,921.90) and on the deficiency interest which have accrued as afore-stated in (a), computed from June 19, 2009 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended."

SO ORDERED.[22]

Disagreeing with the CTA *en banc*'s decision, MEDICARD filed a motion for reconsideration but it was denied.[23] Hence, MEDICARD now seeks recourse to this Court *via* a petition for review on *certiorari*.

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[22] *Id*. at 43-44.

[23] *Id*. at 46-59.

The Issues

1. WHETHER THE ABSENCE OF THE LOA IS FATAL; and

2. WHETHER THE AMOUNTS THAT MEDICARD EARMARKED AND EVENTUALLY PAID TO THE MEDICAL SERVICE PROVIDERS SHOULD STILL FORM PART OF ITS GROSS RECEIPTS FOR VAT PURPOSES.[24]

Ruling of the Court

The petition is meritorious.

The absence of an LOA violated MEDICARD's right to due process

An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[25] An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:

SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –*

(A) **Examination of Return and Determination of Tax Due**. – After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

x x x x x x x x x (Emphasis and underlining ours)

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[24] *Id*. at 197-198.

[25] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, 649 Phil. 519, 529-530 (2010).

Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.

With the advances in information and communication technology, the Bureau of Internal Revenue (BIR) promulgated RMO No. 30-2003 to lay down the policies and guidelines once its then incipient centralized Data Warehouse (DW) becomes fully operational in conjunction with its Reconciliation of Listing for Enforcement System (RELIEF System).[26] This system can detect tax leaks by matching the data available under the BIR's Integrated Tax System (ITS) with data gathered from third-party sources. Through the consolidation and cross-referencing of third-party information, discrepancy reports on sales and purchases can be generated to uncover under declared income and over claimed purchases of goods and services.

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[26] The following are the objectives of RMO No. 30-2003: 1. Establish adequate controls to ensure security/integrity and confidentiality of RELIEF data maintained in the DW, consistent with relevant statutes and policies concerning Unlawful Disclosure; 2. Delineate the duties and responsibilities of offices responsible for oversight of the RELIEF system including all activities associated with requests for access and farming out of RELIEF data to the regional and district offices; 3. Prescribe procedures in the resolution of matched error or discrepancies, examination of taxpayer's records, assessment and collection of deficiency taxes; and 4. Prescribe standard report format to be used by all concerned offices in the implementation of this Order. <https://www.bir.gov.ph/images/bir_files/old_files/pdf/1966rmo03_30.pdf> visited last March 7, 2017.

Under this RMO, several offices of the BIR are tasked with specific functions relative to the RELIEF System, particularly with regard to LNs. Thus, the Systems Operations Division (SOD) under the Information Systems Group (ISG) is responsible for: (1) coming up with the List of Taxpayers with discrepancies within the threshold amount set by management for the issuance of LN and for the system-generated LNs; and (2) sending the same to the taxpayer and to the Audit Information, Tax Exemption and Incentives Division (AITEID). After receiving the LNs, the AITEID under the Assessment Service (AS), in coordination with the concerned offices under the ISG, shall be responsible for transmitting the LNs to the investigating offices [Revenue District Office (RDO)/ Large Taxpayers District Office (LTDO)/Large Taxpayers Audit and Investigation Division (LTAID)]. At the level of these investigating offices, the appropriate action on the LNs issued to taxpayers with RELIEF data discrepancy would be determined.

RMO No. 30-2003 was supplemented by RMO No. 42-2003, which laid down the "***no-contact-audit approach***" in the CIR's exercise of its power to authorize any examination of taxpayer and the assessment of the correct amount of tax. The *no-contact-audit approach* includes the process of computerized matching of sales and purchases data contained in the Schedules of Sales and Domestic Purchases, and Schedule of Importation submitted by VAT taxpayers under the RELIEF System pursuant to RR No. 7-95, as amended by RR Nos. 13-97, 7-99 and 8-2002. This may also include the matching of data from other information or returns filed by the taxpayers with the BIR such as Alphalist of Payees subject to Final or Creditable Withholding Taxes.

Under this policy, even without conducting a detailed examination of taxpayer's books and records, if the computerized/manual matching of sales and purchases/expenses appears to reveal discrepancies, the same shall be communicated to the concerned taxpayer through the issuance of LN. The LN shall serve as a discrepancy notice to taxpayer similar to a Notice for Informal Conference to the concerned taxpayer. Thus, under the RELIEF System, a revenue officer may begin an examination of the taxpayer even prior to the issuance of an LN or even in the absence

of an LOA with the aid of a computerized/manual matching of taxpayers' documents/records. Accordingly, under the RELIEF System, the presumption that the tax returns are in accordance with law and are presumed correct since these are filed under the penalty of perjury[27] are easily rebutted and the taxpayer becomes instantly burdened to explain a purported discrepancy.

Noticeably, both RMO No. 30-2003 and RMO No. 42-2003 are silent on the statutory requirement of an LOA before any investigation or examination of the taxpayer may be conducted. As provided in the RMO No.42-2003, the LN is merely similar to a Notice for Informal Conference. However, for a Notice of Informal Conference, which generally precedes the issuance of an assessment notice to be valid, the same presupposes that the revenue officer who issued the same is properly authorized in the first place.

With this apparent lacuna in the RMOs, in November 2005, RMO No. 30-2003, as supplemented by RMO No. 42-2003, was amended by RMO No. 32-2005 to fine tune existing procedures in handing assessments against taxpayers' issued LNs by reconciling various revenue issuances which conflict with the NIRC. Among the objectives in the issuance of RMO No. 32-2005 is to prescribe procedure in the resolution of LN discrepancies, conversion of LNs to LOAs and assessment and collection of deficiency taxes.

IV. POLICIES AND GUIDELINES

x x x x x x x x x

8. In the event a taxpayer who has been issued an LN refutes the discrepancy shown in the LN, the concerned taxpayer will be given an opportunity to reconcile its records with those of the BIR within One Hundred and Twenty (120) days from the date of the issuance of the LN. However, the subject taxpayer shall no longer be entitled to the abatement of interest and penalties after the lapse of the sixty (60)-day period from the LN issuance.

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[27] *SMI-Ed Philippines Technology, Inc. v. Commissioner of Internal Revenue*, G.R. No. 175410, November 12, 2014, 739 SCRA 691, 701.

9. In case the above discrepancies remained unresolved at the end of the One Hundred and Twenty (120)-day period, the revenue officer (RO) assigned to handle the LN shall recommend the issuance of [LOA] to replace the LN. The head of the concerned investigating office shall submit a summary list of LNs for conversion to LAs (using the herein prescribed format in Annex "E" hereof) to the OACIR-LTS / ORD for the preparation of the corresponding LAs with the notation "This LA cancels LN No._____"

x x x x x x x x x

V. PROCEDURES

x x x x x x x x x

B. At the Regional Office/Large Taxpayers Service

x x x x x x x x x

7. Evaluate the Summary List of LNs for Conversion to LAs submitted by the RDO x x x prior to approval.

8. Upon approval of the above list, prepare/ accomplish and sign the corresponding LAs.

x x x x x x x x x

10. Transmit the approved/signed LAs, together with the duly accomplished/approved Summary List of LNs for conversion to LAs, to the concerned investigating offices for the encoding of the required information x x x and for service to the concerned taxpayers.

x x x x x x x x x

C. At the RDO x x x

x x x x x x x x x

11. If the LN discrepancies remained unresolved within One Hundred and Twenty (120) days from issuance thereof, prepare a summary list of said LNs for conversion to LAs x x x.

x x x x x x x x x

16. **Effect the service of the above LAs to the concerned taxpayers.**[28]

In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid. Hence, the CTA's disregard of MEDICARD's right to due process warrant the reversal of the assailed decision and resolution.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[29] the Court said that:

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**.[30] (Emphasis and underlining ours)

The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal remedies, particularly closure, criminal action, or audit and investigation. Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the

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[28] <https://www.bir.gov.ph/images/bir_filed/old_files/pdf/27350RMO%2032-2005.pdf> visited last March 7, 2017.

[29] 649 Phil. 519 (2010).

[30] *Id*. at 530.

absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.

The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 120 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation.[31] Simply put, LN is entirely different and serves a different purpose than an LOA. Due process demands, as recognized under RMO No. 32-2005, that after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case.

Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.

The BIR's RELIEF System has admittedly made the BIR's assessment and collection efforts much easier and faster. The ease by which the BIR's revenue generating objectives is

[31] BIR's General Audit Procedures and Documentation.

achieved is no excuse however for its non-compliance with the statutory requirement under Section 6 and with its own administrative issuance. In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.

That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.

At any rate, even if it is assumed that the absence of an LOA is not fatal, the Court still partially finds merit in MEDICARD's substantive arguments.

The amounts earmarked and eventually paid by MEDICARD to the medical service providers do not form part of gross receipts for VAT purposes

MEDICARD argues that the CTA *en banc* seriously erred in affirming the ruling of the CTA Division that the gross receipts of an HMO for VAT purposes shall be the

total amount of money or its equivalent actually received from members undiminished by any amount paid or payable to the owners/operators of hospitals, clinics and medical and dental practitioners. MEDICARD explains that its business as an HMO involves two different although interrelated contracts. One is between a corporate client and MEDICARD, with the corporate client's employees being considered as MEDICARD members; and the other is between the healthcare institutions/healthcare professionals and MEDICARD.

Under the first, MEDICARD undertakes to make arrangements with healthcare institutions/healthcare professionals for the coverage of MEDICARD members under specific health related services for a specified period of time in exchange for payment of a more or less fixed membership fee. Under its contract with its corporate clients, MEDICARD expressly provides that 20% of the membership fees per individual, regardless of the amount involved, already includes the VAT of 10%/20% excluding the remaining 80% because MEDICARD would earmark this latter portion for medical utilization of its members. Lastly, MEDICARD also assails CIR's inclusion in its gross receipts of its earnings from medical services which it actually and directly rendered to its members.

Since an HMO like MEDICARD is primarily engaged in arranging for coverage or designated managed care services that are needed by plan holders/members for fixed prepaid membership fees and for a specified period of time, then MEDICARD is principally engaged in the sale of services. Its VAT base and corresponding liability is, thus, determined under Section 108(A)[32] of the Tax Code, as amended by Republic Act No. 9337.

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[32] SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* -

(A) *Rate and Base of Tax.* - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: Provided, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:

Prior to RR No. 16-2005, an HMO, like a pre-need company, is treated for VAT purposes as a dealer in securities whose gross receipts is the amount actually received as contract

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(i) Value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent (2 4/5%); or

(ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 1/2%).

The phrase '**sale or exchange of services**' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, rest-houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land relative to their transport of goods or cargoes; common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines; sales of electricity by generation companies, transmission, and distribution companies; services of franchise grantees of electric utilities, telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase'**sale or exchange of services**' shall likewise include:

(1) The lease or the use of or the right or privilege to use any copyright, patent, design or model plan, secret formula or process, goodwill, trademark, trade brand or other like property or right;

(2) The lease or the use of, or the right to use of any industrial, commercial or, scientific equipment;

(3) The supply of scientific, technical, industrial or commercial knowledge or information;

(4) The supply of any assistance that is ancillary and subsidiary to and is furnished as a means of enabling the application or enjoyment of any such property, or right as is mentioned in subparagraph (2) or any such knowledge or information as is mentioned in subparagraph (3);

price without allowing any deduction from the gross receipts.[33] This restrictive tenor changed under RR No. 16-2005. Under this RR, an HMO's gross receipts and gross receipts in general were defined, thus:

Section 4.108-3. x x x

x x x x x x x x x

HMO's gross receipts shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the value-added tax. **The compensation for their services representing their service fee, is presumed to be the total amount received as enrollment fee from their members plus other charges received.**

Section 4.108-4. x x x. "***Gross receipts***" refers to the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits applied

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(5) The supply of services by a nonresident person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any brand, machinery or other apparatus purchased from such nonresident person;

(6) The supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme;

(7) The lease of motion picture films, films, tapes and discs; and

(8) The lease or the use of or the right to use radio, television, satellite transmission and cable television time.

Lease of properties shall be subject to the tax herein imposed irrespective of the place where the contract of lease or licensing agreement was executed if the property is leased or used in the Philippines.

The term 'gross receipts' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax. (Emphasis ours)

[33] RR No. 14-2005, Section 4.108-3 (i).

as **payments for services rendered**, and advance payments actually or constructively received during the taxable period **for the services performed or to be performed** for another person, excluding the VAT.[34]

In 2007, the BIR issued RR No. 4-2007 amending portions of RR No. 16-2005, including the definition of gross receipts in general.[35]

According to the CTA *en banc*, the entire amount of membership fees should form part of MEDICARD's gross receipts because the exclusions to the gross receipts under RR No. 4-2007 does not apply to MEDICARD. What applies to MEDICARD is the definition of gross receipts of an HMO under RR No. 16-2005 and not the modified definition of gross receipts in general under the RR No. 4-2007.

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[34] <https://www.bir.gov.ph/images/bir_files/old_files/pdf/26116rr16-2005.pdf> visited last March 7, 2017.

[35] Gross receipts' refers to the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits applied as payments for services rendered and advance payments actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the VAT, except those amounts earmarked for payment to unrelated third (3rd) party or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor.

A payment is a payment to a third (3rd) party if the same is made to settle an obligation of another person, e.g., customer or client, to the said third party, which obligation is evidenced by the sales invoice/official receipt issued by said third party to the obligor/debtor (e.g., customer or client of the payor of the obligation).

An advance payment is an advance payment on behalf of another if the same is paid to a third (3rd) party for a present or future obligation of said another party which obligation is evidenced by a sales invoice/official receipt issued by the obligee/creditor to the obligor/debtor (i.e., the aforementioned 'another party') for the sale of goods or services by the former to the latter.

For this purpose 'unrelated party' shall not include taxpayer's employees, partners, affiliates (parent, subsidiary and other related companies), relatives by consanguinity or affinity within the fourth (4th) civil degree, and trust fund where the taxpayer is the trustor, trustee or beneficiary, even if covered by an agreement to the contrary. (Underlining in the original)

The CTA *en banc* overlooked that the definition of gross receipts under RR No. 16-2005 merely presumed that the amount received by an HMO as membership fee is the HMO's compensation for their services. As a mere presumption, an HMO is, thus, allowed to establish that a portion of the amount it received as membership fee does NOT actually compensate it but some other person, which in this case are the medical service providers themselves. It is a well-settled principle of legal hermeneutics that words of a statute will be interpreted in their natural, plain and ordinary acceptation and signification, unless it is evident that the legislature intended a technical or special legal meaning to those words. The Court cannot read the word "presumed" in any other way.

It is notable in this regard that the term gross receipts as elsewhere mentioned as the tax base under the NIRC does not contain any specific definition.[36] Therefore, absent a statutory definition, this Court has construed the term gross receipts in its plain and ordinary meaning, that is, gross receipts is understood as comprising the entire receipts without any deduction.[37] Congress, under Section 108, could have simply left the term gross receipts similarly undefined and its interpretation subjected to ordinary acceptation. Instead of doing so, Congress limited the scope of the term gross receipts for VAT purposes only to the amount that the taxpayer received for the services it performed or to the amount it received as advance payment for the services it will render in the future for another person.

In the proceedings below, the nature of MEDICARD's business and the extent of the services it rendered are not seriously disputed. As an HMO, MEDICARD primarily acts as an intermediary between the purchaser of healthcare services (its

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[36] Compare with Section 125 of the NIRC, where the gross receipts for purposes of amusement tax broadly included "all receipts of the proprietor, lessee or operator of the amusement place." *See* Sections 116, 117, 119 and 121 of the NIRC, as amended by R.A. No. 9337.

[37] *Commissioner of Internal Revenue v. Bank of Commerce*, 498 Phil. 673, 685 (2005).

members) and the healthcare providers (the doctors, hospitals and clinics) for a fee. By enrolling membership with MEDICARD, its members will be able to avail of the pre-arranged medical services from its accredited healthcare providers without the necessary protocol of posting cash bonds or deposits prior to being attended to or admitted to hospitals or clinics, especially during emergencies, at any given time. Apart from this, MEDICARD may also directly provide medical, hospital and laboratory services, which depends upon its member's choice.

Thus, in the course of its business as such, MEDICARD members can either avail of medical services from MEDICARD's accredited healthcare providers or directly from MEDICARD. In the former, MEDICARD members obviously knew that beyond the agreement to pre-arrange the healthcare needs of its members, MEDICARD would not actually be providing the actual healthcare service. Thus, based on industry practice, MEDICARD informs its would-be member beforehand that 80% of the amount would be earmarked for medical utilization and only the remaining 20% comprises its service fee. In the latter case, MEDICARD's sale of its services is exempt from VAT under Section 109(G).

The CTA's ruling and CIR's Comment have not pointed to any portion of Section 108 of the NIRC that would extend the definition of gross receipts even to amounts that do not only pertain to the services to be performed by another person, other than the taxpayer, but even to amounts that were indisputably utilized not by MEDICARD itself but by the medical service providers.

It is a cardinal rule in statutory construction that no word, clause, sentence, provision or part of a statute shall be considered surplusage or superfluous, meaningless, void and insignificant. To this end, a construction which renders every word operative is preferred over that which makes some words idle and nugatory. This principle is expressed in the maxim *Ut magis valeat quam pereat*, that is, we choose the interpretation which gives effect to the whole of the statute – its every word.

In *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*,[38] the Court adopted the principal object and purpose object in determining whether the MEDICARD therein is engaged in the business of insurance and therefore liable for documentary stamp tax. The Court held therein that an HMO engaged in preventive, diagnostic and curative medical services is not engaged in the business of an insurance, thus:

> To summarize, the distinctive features of the cooperative are **the rendering of service, its extension, the bringing of physician and patient together, the preventive features, the regularization of service as well as payment, the substantial reduction in cost by quantity purchasing in short, getting the medical job done and paid for; not, except incidentally to these features, the indemnification for cost after the services is rendered. Except the last, these are not distinctive or generally characteristic of the insurance arrangement.** There is, therefore, a substantial difference between contracting in this way for the rendering of service, even on the contingency that it be needed, and contracting merely to stand its cost when or after it is rendered.[39] (Emphasis ours)

In sum, the Court said that the main difference between an HMO and an insurance company is that HMOs undertake to provide or arrange for the provision of medical services through participating physicians while insurance companies simply undertake to indemnify the insured for medical expenses incurred up to a pre-agreed limit. In the present case, the VAT is a tax on the value added by the performance of the service by the taxpayer. It is, thus, this service and the value charged thereof by the taxpayer that is taxable under the NIRC.

To be sure, there are pros and cons in subjecting the entire amount of membership fees to VAT.[40] But the Court's task however is not to weigh these policy considerations but to determine

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[38] 616 Phil. 387 (2009).

[39] *Id*. at 404-405, citing *Jordan v. Group Health Association*, 107 F.2d 239, 247-248 (D.C. App. 1939).

[40] For instance, arguably, excluding from an HMO's gross receipts the amount that they indisputably utilized for the benefit of their members could

if these considerations in favor of taxation can even be implied from the statute where the CIR purports to derive her authority. This Court rules that they cannot because the language of the NIRC is pretty straightforward and clear. As this Court previously ruled:

> What is controlling in this case is the well-settled doctrine of strict interpretation in the imposition of taxes, not the similar doctrine as applied to tax exemptions. The rule in the interpretation of tax laws is that a statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. **A tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication**. In answering the question of who is subject to tax statutes, it is basic that in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import. As burdens, taxes should not be unduly exacted nor assumed beyond the plain meaning of the tax laws.[41] (Citation omitted and emphasis and underlining ours)

For this Court to subject the entire amount of MEDICARD's gross receipts without exclusion, the authority should have been reasonably founded from the language of the statute. That language is wanting in this case. In the scheme of judicial tax administration, the need for certainty and predictability in the implementation of tax laws is crucial. Our tax authorities fill in the details that Congress may not have the opportunity or competence to provide. The regulations these authorities issue are relied upon by taxpayers, who are certain that these will be followed by the courts. Courts,

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mean lessening the state's burden of having to spend for the amount of these services were it not for the favorable effect of the exclusion on the overall healthcare scheme. Similarly, the indirect benefits of an HMO's diagnostic and preventive medical health service (as distinguished from its curative medical health service generally associated with the reimbursement scheme of health insurance) to the state's legitimate interest of maintaining a healthy population may also arguably explain the exclusion of the medically utilized amount from an HMO's gross receipts.

[41] *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*, 581 Phil. 146, 168 (2008).

however, will not uphold these authorities' interpretations when clearly absurd, erroneous or improper.[42] The CIR's interpretation of gross receipts in the present case is patently erroneous for lack of both textual and non-textual support.

As to the CIR's argument that the act of earmarking or allocation is by itself an act of ownership and management over the funds, the Court does not agree. On the contrary, it is MEDICARD's act of earmarking or allocating 80% of the amount it received as membership fee at the time of payment that weakens the ownership imputed to it. By earmarking or allocating 80% of the amount, MEDICARD unequivocally recognizes that its possession of the funds is not in the concept of owner but as a mere administrator of the same. For this reason, at most, MEDICARD's right in relation to these amounts is a mere inchoate owner which would ripen into actual ownership if, and only if, there is underutilization of the membership fees at the end of the fiscal year. Prior to that, MEDICARD is bound to pay from the amounts it had allocated as an administrator once its members avail of the medical services of MEDICARD's healthcare providers.

Before the Court, the parties were one in submitting the legal issue of whether the amounts MEDICARD earmarked, corresponding to 80% of its enrollment fees, and paid to the medical service providers should form part of its gross receipt for VAT purposes, after having paid the VAT on the amount comprising the 20%. It is significant to note in this regard that MEDICARD established that upon receipt of payment of membership fee it actually issued two official receipts, one pertaining to the VATable portion, representing compensation for its services, and the other represents the non-vatable portion pertaining to the amount earmarked for medical utilization. Therefore, the absence of an actual and physical segregation of the amounts pertaining to two different kinds of fees cannot arbitrarily disqualify MEDICARD from rebutting the presumption under the law and from proving that indeed services were rendered by its healthcare providers for which it paid the amount it sought to be excluded from its gross receipts.

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[42] *Commissioner of Internal Revenue v. Central Luzon Drug Corporation,* 496 Phil. 307, 332 (2005).

With the foregoing discussions on the nullity of the assessment on due process grounds and violation of the NIRC, on one hand, and the utter lack of legal basis of the CIR's position on the computation of MEDICARD's gross receipts, the Court finds it unnecessary, nay useless, to discuss the rest of the parties' arguments and counter-arguments.

In fine, the foregoing discussion suffices for the reversal of the assailed decision and resolution of the CTA *en banc* grounded as it is on due process violation. The Court likewise rules that for purposes of determining the VAT liability of an HMO, the amounts earmarked and actually spent for medical utilization of its members should not be included in the computation of its gross receipts.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is hereby **GRANTED**. The Decision dated September 2, 2015 and Resolution dated January 29, 2016 issued by the Court of Tax Appeals *en banc* in CTA EB No. 1224 are **REVERSED** and **SET ASIDE**. The definition of gross receipts under Revenue Regulations Nos. 16-2005 and 4-2007, in relation to Section 108(A) of the National Internal Revenue Code, as amended by Republic Act No. 9337, for purposes of determining its Value-Added Tax liability, is hereby declared to **EXCLUDE** the eighty percent (80%) of the amount of the contract price earmarked as fiduciary funds for the medical utilization of its members. Further, the Value-Added Tax deficiency assessment issued against Medicard Philippines, Inc. is hereby declared unauthorized for having been issued without a Letter of Authority by the Commissioner of Internal Revenue or his duly authorized representatives.

SO ORDERED.

Velasco, Jr. (Chairperson), *Bersamin, Caguioa,*[*] and *Tijam, JJ.,* concur.

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[*] Additional Member per Raffle dated April 3, 2017 *vice* Associate Justice Francis H. Jardeleza.

FIRST DIVISION

[A.M. No. 17-03-33-MCTC. April 17, 2017]

RE: DROPPING FROM THE ROLLS OF ROWIE A. QUIMNO, Utility Worker I, Municipal Circuit Trial Court of Ipil - Tungawan - Roseller T. Lim, Ipil, Zamboanga Sibugay.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; OMNIBUS CIVIL SERVICE RULES AND REGULATIONS; OMNIBUS RULES ON LEAVE (AS AMENDED BY MEMORANDUM CIRCULAR NO. 13, SERIES OF 2007); EFFECT OF ABSENCES WITHOUT APPROVED LEAVE; AN OFFICIAL OR EMPLOYEE ON AWOL (ABSENCE WITHOUT OFFICIAL LEAVE) SHALL BE SEPARATED FROM THE SERVICE OR DROPPED FROM THE ROLLS WITHOUT PRIOR NOTICE; APPLICATION IN CASE AT BAR.— Section 63, Rule XVI of the Omnibus Rules on Leave, as amended by Memorandum Circular No. 13, Series of 2007, states: Section 63. *Effect of absences without approved Leave.* — An official or employee who is **continuously absent without approved leave for at least thirty (30) working days** shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice. x x x. Based on this provision, Quimno should be separated from service or dropped from the rolls in view of his continued absence since February 2016. Indeed, prolonged unauthorized absence causes inefficiency in the public service. A court employee's continued absence without leave disrupts the normal functions of the court. It contravenes the duty of a public servant to serve with the utmost degree of responsibility, integrity, loyalty, and efficiency. The Court stresses that a court personnel's conduct is laden with the heavy burden of responsibility to uphold public accountability and maintain people's faith in the judiciary. As Judge Ventura reported, Quimno failed to report for work long before he was arrested. He also exhibited disinterest in diligently fulfilling

his assigned tasks. Evidently, his conduct constitutes gross disregard and neglect of his duties. Undeniably, he failed to adhere to the high standards of public accountability imposed on all those in the government service.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This administrative case involves Mr. Rowie A. Quimno (Quimno), Utility Worker I in the Municipal Circuit Trial Court (MCTC) of Ipil-Tungawan-Roseller T. Lim in Ipil, Zamboanga Sibugay.

The records of the Employees' Leave Division, Office of Administrative Services, Office of the Court Administrator (OCA), show that Quimno has not submitted his Daily Time Record (DTR) since February 2016 up to the present. He neither submitted any application for leave. Thus, he has been on absence without official leave (AWOL) since February 1, 2016.[1]

Moreover, Presiding Judge Arthur L. Ventura (Judge Ventura) of the MCTC informed the OCA that Quimno not only failed to submit his DTR since the month of February 2016, but also failed to report for work since July 20, 2016 without applying for leave.[2] Judge Ventura added that prior to said date, Quimno was either late for work or absent; showed little concern for time lost from work; and was lazy, indifferent, and unreliable.[3] Thus, Quimno received unsatisfactory ratings in his performance evaluations for the rating periods July 1 to December 31, 2015[4] and January 1 to June 30, 2016.[5] Judge Ventura later found out that Quimno was arrested at his residence on September 20,

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[1] *Rollo*, p. 1.

[2] *Id.* at 3.

[3] *Id.*

[4] *Id.* at 5.

[5] *Id.* at 6.

2016; and was subsequently formally charged for violating several provisions of Republic Act No. 9165 before the Regional Trial Court of Ipil, Zamboanga Sibugay, Branch 24.[6]

To date, Quimno has still not reported for work. His salaries and benefits were withheld based on a Memorandum dated June 2, 2016.[7]

The OCA informed the Court of its findings based on the records of its different offices: (*a*) Quimno is still in the *plantilla* of court personnel, and thus, considered to be in active service; (*b*) he is no longer in the payroll; (*c*) he has no application for retirement; (*d*) no administrative case is pending against him; and (*e*) he is not an accountable officer.[8]

In its report[9] dated February 20, 2017, the OCA recommended that: (*a*) Quimno's name be dropped from the rolls effective February 1, 2016 for having been absent without official leave for more than thirty (30) working days; (*b*) his position be declared vacant; and (*c*) he be informed about his separation from service at his last known address on record at Purok Everlasting, Don Andres, Ipil, Zamboanga Sibugay. The OCA added, however, that Quimno is still qualified to receive the benefits he may be entitled to under existing laws and may still be reemployed in the government.[10]

The Court's Ruling

The Court agrees with the OCA's recommendation.

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[6] *Id*. See also Informations; *id*. at 7-12.

[7] *Id*. at 13-14. Approved by Deputy Court Administrator and Officer-in-Charge per Office Order No. 10-2016 dated May 31, 2016 Raul Bautista Villanueva.

[8] *Id*. at 1 and 14.

[9] *Id*. at 1-2. Signed by Court Administrator Jose Midas P. Marquez, Deputy Court Administrator Raul Bautista Villanueva and OCA Chief of Office Caridad A. Pabello.

[10] *Id*. at 2.

Section 63, Rule XVI of the Omnibus Rules on Leave, as amended by Memorandum Circular No. 13, Series of 2007,[11] states:

> Section 63. *Effect of absences without approved Leave.* — An official or employee who is **continuously absent without approved leave for at least thirty (30) working days** shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice. x x x.
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> x x x x x x x x x (Emphasis supplied)

Based on this provision, Quimno should be separated from service or dropped from the rolls in view of his continued absence since February 2016.

Indeed, prolonged unauthorized absence causes inefficiency in the public service.[12] A court employee's continued absence without leave disrupts the normal functions of the court.[13] It contravenes the duty of a public servant to serve with the utmost degree of responsibility, integrity, loyalty, and efficiency.[14] The Court stresses that a court personnel's conduct is laden with the heavy burden of responsibility to uphold public accountability and maintain people's faith in the judiciary.[15]

As Judge Ventura reported, Quimno failed to report for work long before he was arrested. He also exhibited disinterest in diligently fulfilling his assigned tasks. Evidently, his conduct constitutes gross disregard and neglect of his duties. Undeniably, he failed to adhere to the high standards of public accountability imposed on all those in the government service.[16]

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[11] Amending the Omnibus Civil Service Rules and Regulations, entitled "Re: Amendment to Section 63, Rule XVI of the Omnibus Rules on Leave, Civil Service Commission (CSC) Memorandum Circular Nos. 41 and 14, Series of 1998 and 1999, Respectively" (July 25, 2007).

[12] See Notice of Resolution in *Re: Dropping from the Rolls of Ronie B. Sumampong*, A.M. No. 16-05-157-RTC, June 27, 2016.

[13] *Re: AWOL of Ms. Fernandita B. Borja*, 549 Phil. 533, 536 (2007).

[14] *Id*.

[15] See *id*.

[16] See *Re: Dropping from the Rolls of Ronie B. Sumampong, supra* note 12.

WHEREFORE, Rowie A. Quimno, Utility Worker I, Municipal Circuit Trial Court, Ipil-Tungawan-Roseller T. Lim, Ipil, Zamboanga Sibugay, is hereby **DROPPED** from the rolls effective February 1, 2016 and his position is declared **VACANT**. He is, however, still qualified to receive the benefits he may be entitled to under existing laws and may still be reemployed in the government.

Let a copy of this Resolution be served upon him at his address appearing in his 201 file pursuant to Rule XVI, Section 63 of the Omnibus Civil Service Rules and Regulations, as amended.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, del Castillo, and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 181149[*]. April 17, 2017]

CITY OF DAVAO, represented by RODRIGO R. DUTERTE, in his capacity as City Mayor, RIZALINA JUSTOL, in her capacity as the City Accountant, and ATTY. WINDEL E. AVISADO, in his capacity as City Administrator, *petitioner, vs.* **ROBERT E. OLANOLAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; CONCEPT.— "*Mandamus* is defined as a writ commanding a tribunal, corporation, board or person to do the act required to be done when it or he unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another

[*] Part of the Court's Case Decongestion Program.

from the use and enjoyment of a right or office or which such other is entitled, there being no other plain, speedy, and adequate remedy in the ordinary course of law." In *Special People, Inc. Foundation v. Canda*, the Court explained that the peremptory writ of *mandamus* is an extraordinary remedy that is issued only in extreme necessity, and the ordinary course of procedure is powerless to afford an adequate and speedy relief **to one who has a clear legal right to the performance of the act to be compelled**.

2. ID.; ID.; ID.; RESPONDENT'S LACK OF CLEAR LEGAL RIGHT TO THE PERFORMANCE OF THE LEGAL ACT TO BE COMPELLED JUSTIFIES THE DISMISSAL OF HIS *MANDAMUS* PETITION.— [R]espondent anchors his legal interest to claim such relief on his ostensible authority as *Punong Barangay* of Brgy. 76-A. x x x However, records clearly show that respondent's proclamation as *Punong Barangay* was overturned by the COMELEC upon the successful election protest of Tizon, who was later declared the duly-elected *Punong Barangay* of Brgy. 76-A. While the Court *en banc* indeed issued an SQAO on November 9, 2004 which temporarily reinstated respondent to the disputed office, the same was recalled on March 31, 2005 when a Decision was rendered dismissing respondent's petition in G.R. No. 165491. x x x [C]onsidering that respondent had no right to the office of *Punong Barangay* at the time he filed his *mandamus* petition on July 26, 2005, during which the SQAO had already been recalled, he had no valid legal interest to the reliefs prayed for. In fact, it should be pointed out that respondent's motion for reconsideration before the Court was altogether denied with finality even prior to his filing of the *mandamus* petition, *i.e.*, on June 28, 2005. This means that, for all legal intents and purposes, respondent could not have even relied on the supposed effectivity of the SQAO during the pendency of his motion for reconsideration, because at the time he filed his *mandamus* petition, the Court's March 31, 2005 Decision against him had already attained finality. Therefore, stripped of the technical niceties, the Court finds that respondent had no clear legal right to the performance of the legal act to be compelled of, which altogether justifies the dismissal of his *mandamus* petition.

3. ID.; ID.; ID.; *MANDAMUS* DOES NOT LIE TO ENFORCE THE PERFORMANCE OF A DISCRETIONARY FUNCTION.— [P]etitioner could not have been compelled by *mandamus* to release the funds prayed for by respondent in view of the attending circumstances. It is well-settled that "[m]andamus only lies to enforce the performance of a ministerial act or duty and not to control the performance of a discretionary power. Purely administrative and discretionary functions may not be interfered with by the courts. Discretion, as thus intended, means the power or right conferred upon the office by law of acting officially under certain circumstances according to the dictates of his own judgment and conscience and not controlled by the judgment or conscience of others." In this case, petitioner, as city government, had to exercise its discretion not to release the funds to respondent considering the COMELEC's declaration of Tizon as the duly-elected *Punong Barangay* of Brgy. 76-A. Surely, it was part of petitioner's fiscal responsibility to ensure that the barangay funds would not be released to a person without proper authority.

4. ID.; ID.; ID.; IN VIEW OF SUPERVENING CIRCUMSTANCES WHICH PRECLUDE THE SATISFACTION OF THE RELIEFS PRAYED FOR, RESPONDENT'S *MANDAMUS* PETITION SHOULD ALSO BE DISMISSED ON THE GROUND OF MOOTNESS.— [P]etitioner points out that the issue in this case has already been rendered moot and academic. In particular, petitioner states that the release of the barangay funds corresponding to the aggregate amount of respondents' claim is no longer possible given that the budget for the year 2005 has already been exhausted. x x x Thus, given these supervening circumstances which ostensibly preclude the satisfaction of the reliefs prayed for, respondent's *mandamus* petition should also be dismissed on the ground of mootness.

APPEARANCES OF COUNSEL

J. Melchor V. Quitain for petitioner.

Into Pantojann Feliciano-Braceros & Pantojan Law Offices for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated June 29, 2006 and the Resolution[3] dated November 21, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 00643 which: (*a*) nullified and set aside the Orders dated September 5, 2005[4] and September 22, 2005[5] of the Regional Trial Court of Davao City, Branch 16 (RTC) in Spec. Civil Case No. 31,005-2005, dismissing the petition for *mandamus* filed by respondent Robert E. Olanolan (respondent) on procedural grounds; and (*b*) directed petitioner City of Davao (petitioner) to immediately release the withheld funds of Barangay 76-A, Bucana, Davao City (Brgy. 76-A).

The Facts

On July 15, 2002, respondent was elected and proclaimed *Punong Barangay* of Brgy. 76-A. On July 25, 2002, an election protest was filed by the opposing candidate, Celso A. Tizon (Tizon), before the Municipal Trial Court in Cities, Davao City (MTCC). Tizon's election protest was initially dismissed by the MTCC, but was later granted by the Commission on Elections (COMELEC), 2nd Division, on appeal. Hence, Tizon was declared the duly-elected *Punong Barangay* of Brgy. 76-A.[6]

Respondent filed a motion for reconsideration[7] before the COMELEC, but to no avail. Thus, he filed a Petition for

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[1] *Rollo*, pp. 7-46.

[2] *Id*. at 50-69. Penned by Associate Justice Ricardo R. Rosario with Associate Justices Edgardo A. Camello and Sixto C. Marella, Jr. concurring.

[3] *Id*. at 71-80. Penned by Associate Justice Edgardo A. Camello with Associate Justices Jane Aurora C. Lantion and Elihu A. Ybañez concurring.

[4] *Id*. at 103-104. Penned by Presiding Judge Emmanuel C. Carpio.

[5] *Id*. at 105-109.

[6] *Id*. at 51.

[7] Not attached to the *rollo*.

Certiorari, *Mandamus* and Prohibition, with prayer for Issuance of a Temporary Restraining Order[8] (TRO), before the Court, docketed as G.R. No. 165491. On November 9, 2004, the Court *en banc* gave due course to the petition and issued a *Status Quo Ante* Order (SQAO)[9] which was immediately implemented by the Department of Interior and Local Government (DILG). Thus, respondent was reinstated to the disputed office.[10]

Upon his reinstatement, respondent presided over as Punong Barangay of Brgy. 76-A which, in the regular course of business, passed Ordinance No. 01, Series of 2005,[11] on January 5, 2005, otherwise known as the "General Fund Annual Budget of Barangay Bucana for Calendar Year 2005" totalling up to ₱2,216,180.20. Likewise included in the local government's annual budget is the Personnel Schedule amounting to ₱6,348,232.00, which formed part of the budget of the General Administration, appropriated as salaries and *honoraria* for the 151 employees and workers of Brgy. 76-A.[12]

On March 31, 2005, the Court *en banc* rendered a Decision[13] dismissing respondent's petition in G.R. No. 165491. Consequently, it also recalled its SQAO issued on November 9, 2004[14] (Recall Order). Undaunted,

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[8] Not attached to the *rollo*.

[9] *Rollo*, p. 281.

[10] *Id*. at 51.

[11] *Id*. at 283-284. Entitled "AN ORDINANCE GRANTING LEGISLATIVE AUTHORITY TO THE GENERAL FUND ANNUAL BUDGET OF BARANGAY BUCANA FOR CALENDAR YEAR 2005."

[12] *Id*. at 51-52. The amount of ₱2,216,180.20 was appropriated as Development Fund but the total amount of the General Fund was ₱12,238, 201.00. See also p. 284.

[13] *Id*. at 417-427.

[14] *Id*. at 426.

respondent filed a motion for reconsideration[15] on April 29, 2005.[16]

In the meantime, the Regional Office of the DILG, Region XI rejected the request of Tizon's legal counsel for immediate implementation of the Court's Recall Order on the ground that the timely filing of respondents' motion for reconsideration had stayed the execution of the March 31, 2005 Decision. The City Legal Officer of petitioner, on the other hand, opined[17] that the Recall Order was in effect, an order of dissolution which is immediately executory and effective. On the basis of the latter's opinion, the City of Davao thus refused to recognize all acts and transactions made and entered into by respondent as *Punong Barangay* after his receipt of the Recall Order as it signified his immediate ouster from the disputed office.[18]

This notwithstanding, the Office of the *Sangguniang* Barangay of Brgy. 76-A issued Resolution No. 115, Series of 2005[19] on June 1, 2005, requesting that the Regional Director of the DILG issue a directive for the officials of petitioner to recognize the legitimacy of respondent as *Punong Barangay* of Brgy. 76-A. On June 6, 2005, respondent wrote a letter to the Regional Office XI of the DILG, endorsing the said Resolution.[20]

Before any action could be taken by the DILG on respondent's letter, or on July 26, 2005, he filed a Petition for *Mandamus etc.*[21] (*mandamus* petition) before the RTC,

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[15] *Id*. at 314-346.

[16] *Id*. at 52.

[17] *Id*. at 303-304.

[18] *Id*. at 53.

[19] *Id*. at 309-310.

[20] *Id*. at 53.

[21] *Id*. at 265-280.

docketed as Spec. Civil Case No. 31,005-2005, seeking to compel petitioner to allow the release of funds in payment of all obligations incurred under his administration.[22]

In the interim, the Court *en banc* issued a Resolution[23] dated June 28, 2005, denying with finality respondent's motion for the reconsideration of its March 31, 2005 Decision in G.R. No. 165491 for lack of merit.[24]

The RTC Ruling

In an Order[25] dated September 5, 2005, the RTC dismissed respondent's *mandamus* petition on the sole ground that there was still an adequate remedy still available to respondent in the ordinary course of law, *i.e.*, his pending request before the DILG Regional Director to recognize his legitimacy and to give due course to the financial transactions of Brgy. 76-A under his administration. In this regard, respondent was deemed to have violated the doctrine of exhaustion of administrative remedies, which perforce warranted the dismissal of his petition.[26]

Dissatisfied, respondent filed a motion for reconsideration but was denied in an Order[27] dated September 22, 2005. Thus, he elevated his case to the Court of Appeals (CA) on *certiorari*, docketed as CA-G.R. SP No. 00643.

The CA Ruling

In a Decision[28] dated June 29, 2006, the CA nullified and set aside the RTC's Orders, holding that the latter court gravely abused its discretion in dismissing respondent's *mandamus*

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[22] *Id*. at 53 and 278.

[23] *Id*. at 435.

[24] *Id*. at 54.

[25] *Id*. at 103-104.

[26] *Id*.

[27] *Id*. at 105-109.

[28] *Id*. at 50-69.

petition on the ground of failure to exhaust administrative remedies. In so ruling, the CA observed that an exception to the said doctrine was present in that the *mandamus* petition only raised pure legal questions; hence, the same should not have been dismissed.[29]

Although the RTC confined its ruling on the procedural infirmity of the *mandamus* petition, the CA nonetheless proceeded to resolve the substantive issue of the case, *i.e*., whether or not petitioner should be compelled by *mandamus* to release the funds under respondent's administration. Ruling in the affirmative, the CA ruled that it is the ministerial duty of petitioner to release the share of Brgy. 76-A in the annual budget. Moreover, it found that the city government is not authorized to withhold the said share, as the Local Government Code only mandates that the *Punong Barangay* concerned be accountable for the execution of the annual and supplemental budgets.[30]

Accordingly, the CA directed petitioner to release the withheld funds of Brgy. 76-A, together with the funds for the compensation of the employees and workers which were already due and payable before the Court's issuance of the June 28, 2005 Resolution denying respondent's motion for reconsideration with finality.[31]

Aggrieved, petitioner moved for reconsideration[32] but was denied in a Resolution[33] dated November 21, 2007; hence, this petition.

The Issue Before the Court

The sole issue in this case is whether or not the CA erred in reversing the RTC's dismissal of respondent's *mandamus* petition.

The Court's Ruling

The petition is meritorious.

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[29] *Id*. at 56-63.

[30] *Id*. at 66-67.

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

[32] Not attached to the *rollo*.

[33] *Rollo*, pp. 71-80.

"*Mandamus* is defined as a writ commanding a tribunal, corporation, board or person to do the act required to be done when it or he unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another from the use and enjoyment of a right or office or which such other is entitled, there being no other plain, speedy, and adequate remedy in the ordinary course of law."[34] In *Special People, Inc. Foundation v. Canda*,[35] the Court explained that the peremptory writ of *mandamus* is an extraordinary remedy that is issued only in extreme necessity, and the ordinary course of procedure is powerless to afford an adequate and speedy relief **to one who has a clear legal right to the performance of the act to be compelled**.[36]

In this case, respondent has no clear legal right to the performance of the legal act to be compelled. To recount, respondent filed a *mandamus* petition before the RTC, seeking that petitioner, as city government, release the funds appropriated for Brgy. 76-A, together with the funds for the compensation of barangay employees, and all funds that in the future may accrue to Brgy. 76-A, including legal interests until full payment.[37] As it appears, respondent anchors his legal interest to claim such relief on his ostensible authority as *Punong Barangay* of Brgy. 76-A. In this regard, Section 332 of Republic Act No. 7160,[38] otherwise known as the "Local Government Code of 1991," provides that:

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[34] *Systems Plus Computer College of Caloocan City v. Local Government of Caloocan City*, 455 Phil. 956, 962 (2003), citing Section 3, Rule 65 of the Rules of Court.

[35] 701 Phil. 365 (2013).

[36] See *id.* at 386-387.

[37] *Rollo*, p. 278.

[38] Entitled "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991," approved on October 10, 1991.

Section 332. Effectivity of Barangay Budgets. – The ordinance enacting the annual budget shall take effect at the beginning of the ensuing calendar year. An ordinance enacting a supplemental budget, however, shall take effect upon its approval or on the date fixed therein.

The responsibility for the execution of the annual and supplemental budgets and the accountability therefor shall be vested primarily in the punong barangay concerned. (Emphasis supplied)

However, records clearly show that respondent's proclamation as *Punong Barangay* was overturned by the COMELEC upon the successful election protest of Tizon, who was later declared the duly-elected *Punong Barangay* of Brgy. 76-A. While the Court *en banc* indeed issued an SQAO on November 9, 2004 which temporarily reinstated respondent to the disputed office, the same was recalled on March 31, 2005 when a Decision was rendered dismissing respondent's petition in G.R. No. 165491. The dispositive portion of the said Decision reads:

WHEREFORE, the petition is DISMISSED. Accordingly, the *status quo ante* order issued by this Court on November 9, 2004 is hereby RECALLED.[39]

While respondent did file a motion for reconsideration of the March 31, 2005 Decision, the Court's recall of the SQAO was without any qualification; hence, its effect was immediate and non-contingent on any other occurrence. As such, respondent cannot successfully argue that the SQAO's recall was suspended during the pendency of his motion for reconsideration.

In fact, as petitioners correctly argue,[40] the Court's SQAO is akin to preliminary injunctions and/or TROs. As per the November 9, 2004 Resolution issuing the SQAO, the parties were required "to observe the STATUS QUO prevailing before the issuance of the assailed resolution and order of the Commission on Elections."[41] Therefore, as they carry the same import and effect, the recall of

[39] *Rollo*, p. 426.

[40] *Id*. at 34-36.

[41] *Id*. at 281.

the SQAO subject of this case should be accorded the same treatment as that of the recall of said provisional reliefs.

The recall of the SQAO is effectively a dissolution of the said issuance. In *Defensor-Santiago v. Vasquez*,[42] the Court discussed the immediately executory nature of orders dissolving preliminary injunctions and/or TROs:

> [A]n order of dissolution of an injunction may be immediately effective, even though it is not final. A dismissal, discontinuance, or non-suit of an action in which a restraining order or temporary injunction has been granted operates as a dissolution of the restraining order or temporary injunction and no formal order of dissolution is necessary to effect such dissolution. Consequently, a special order of the court is necessary for the reinstatement of an injunction. There must be a new exercise of judicial power.[43]

Thus, considering that respondent had no right to the office of *Punong Barangay* at the time he filed his *mandamus* petition on July 26, 2005, during which the SQAO had already been recalled, he had no valid legal interest to the reliefs prayed for. In fact, it should be pointed out that respondent's motion for reconsideration before the Court was altogether denied with finality even prior to his filing of the *mandamus* petition, *i.e.*, on June 28, 2005. This means that, for all legal intents and purposes, respondent could not have even relied on the supposed effectivity of the SQAO during the pendency of his motion for reconsideration, because at the time he filed his *mandamus* petition, the Court's March 31, 2005 Decision against him had already attained finality. Therefore, stripped of the technical niceties, the Court finds that respondent had no clear legal right to the performance of the legal act to be compelled of, which altogether justifies the dismissal of his *mandamus* petition.

In addition, petitioner could not have been compelled by *mandamus* to release the funds prayed for by respondent in

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[42] 291 Phil. 664 (1993).

[43] *Id*. at 677. Citations omitted.

view of the attending circumstances. It is well-settled that "[m]andamus only lies to enforce the performance of a ministerial act or duty and not to control the performance of a discretionary power. Purely administrative and discretionary functions may not be interfered with by the courts. Discretion, as thus intended, means the power or right conferred upon the office by law of acting officially under certain circumstances according to the dictates of his own judgment and conscience and not controlled by the judgment or conscience of others."[44]

In this case, petitioner, as city government, had to exercise its discretion not to release the funds to respondent considering the COMELEC's declaration of Tizon as the duly-elected *Punong Barangay* of Brgy. 76-A. Surely, it was part of petitioner's fiscal responsibility to ensure that the barangay funds would not be released to a person without proper authority. Section 305 (l) of RA 7160 provides that:

> Section 305. Fundamental Principles. - The financial affairs, transactions, and operations of local government units shall be governed by the following fundamental principles:
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> x x x x x x x x x
>
> (l) Fiscal responsibility shall be shared by all those exercising authority over the financial affairs, transactions, and operations of the local government units;

Barangay funds shall be kept in the custody of the city or municipal treasurer, at the option of the barangay,[45] and any

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[44] *MERALCO Securities Corp. v. Savellano*, 203 Phil. 173, 181 (1982). Citations omitted.

[45] Section 329. Barangay Funds. – Unless otherwise provided in this Title, all the income of the barangay from whatever source shall accrue to its general fund and shall, at the option of the barangay concerned, be kept as trust fund in the custody of the city or municipal treasurer or be deposited in a bank, preferably government-owned, situated in or nearest to its area of jurisdiction. Such funds shall be disbursed in accordance with the provisions of this Title. Ten percent (10%) of the general fund of the barangay shall be set aside for the sangguniang kabataan.

officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of the law.[46] Moreover, "[t]he city or municipality, through the city or municipal mayor concerned, shall exercise general supervision over component barangays to ensure that the said barangays act within the scope of their prescribed powers and functions."[47] Hence, given the COMELEC's ruling revoking respondent's election and proclamation as *Punong Barangay* of Brgy. 76-A, which in fact, was later on validated by no less than the Court, petitioner could not have been faulted for not automatically releasing the funds sought for by respondent in his *mandamus* petition.

At any rate, petitioner points out that the issue in this case has already been rendered moot and academic. In particular, petitioner states that the release of the barangay funds corresponding to the aggregate amount of respondents' claim is no longer possible given that the budget for the year 2005 has already been exhausted. Notably, respondent did not proffer any objection on the following submissions in the instant petition:

(*a*) [Petitioner] released funds to the Clerk of Court of the Regional Trial Court of Davao City for payment to the REGULAR employees of Brgy. 76-A for the reason that their continuance in office was not dependent on [respondent's] incumbency as *Punong Barangay*. With or without [respondent], these employees are

[46] Section 340. Persons Accountable for Local Government Funds. – Any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of this Title. Other local officers who, though not accountable by the nature of their duties, may likewise be similarly held accountable and responsible for local government funds through their participation in the use or application thereof.

[47] See Section 32 of RA 7160.

secured in their positions. Also, there were available funds in the Barangay 76-A BUDGET to cover their compensation.

(*b*) In contrast, the other set of Barangay functionaries are contractual or job-order workers, and NOT employees of Barangay 76-A. The budget of Barangay 76-A did not have funds to cover their compensation at the time that they were allowed by [respondent] to work or render service for the Barangay. The funds for the year to cover the compensation of these individuals had already been exhausted by the Barangay itself. That is why Supplemental Budget No. 1 had to be drawn up, which budget was, however, not approved. Supplemental Budget No. 1 was drawn up precisely to pay these workers. But the point is, no funds were available to pay the services of these people when they started rendering services at the behest of [respondent.][48]

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Thus, given these supervening circumstances which ostensibly preclude the satisfaction of the relief prayed for, respondent's *mandamus* petition should also the dismisswed on the ground of mootness. That being said, the Court finds it unnecessary to delve into the other issues rised in this case.

WHEREFORE, the petitiion is **GRANTED**. The Decision dated June 29, 2006 and the Resolution dated November 21, 2007 of the Court of Appeals in CA-G.R. SP No. 00643 are hereby **RESERVED** and **SET ASIDE**. The petition for *mandamus* filed by respondent Robert E. Olanolan in Spec. Civil Case No. 31,005-2005 before the Regional Trial Court of Davao City, Branch 16 is **DISMISSED**.

SO ORDERED.

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

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[48] *Rollo*, pp. 42-44. Underlining omitted.

FIRST DIVISION

[G.R. No. 182582*. April 17, 2017]

METROPOLITAN BANK & TRUST COMPANY, *petitioner, vs.* **THE COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; TAX REFUND; BOTH THE ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND SHOULD BE FILED WITHIN THE TWO-YEAR PRESCRIPTIVE PERIOD; CLAIMANT IS ALLOWED TO FILE JUDICIAL CLAIM EVEN WITHOUT WAITING FOR ADMINISTRATIVE RESOLUTION TO PREVENT FORFEITURE OF ITS CLAIM THROUGH PRESCRIPTION.— [A] claimant for refund must first file an administrative claim for refund before the CIR, prior to filing a judicial claim before the CTA. Notably, both the administrative and judicial claims for refund should be filed within the two (2)-year prescriptive period indicated therein, and that the claimant is allowed to file the latter even without waiting for the resolution of the former in order to prevent the forfeiture of its claim through prescription. In this regard, case law states that "the primary purpose of filing an administrative claim [is] to serve as a notice of warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded. To clarify, Section 229 of the Tax Code – then Section 306 of the old Tax Code – however does not mean that the taxpayer must await the final resolution of its administrative claim for refund, since doing so would be tantamount to the taxpayer's forfeiture of its right to seek judicial recourse should the two (2)-year prescriptive period expire without the appropriate judicial claim being filed."

2. ID.; ID.; ID.; WHERE THE CASE INVOLVES FINAL WITHHOLDING TAX ON A BANK'S INTEREST INCOME ON ITS FOREIGN CURRENCY DENOMINATED LOAN, THE TWO-YEAR PRESCRIPTIVE PERIOD COMMENCES

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* Part of the Supreme Court's Case Decongestion Program 2017.

TO RUN FROM THE TIME THE REFUND IS ASCERTAINED OR THE DATE SUCH TAX WAS PAID; APPLYING THE RULE IN CASE AT BAR, PETITIONER'S CLAIM FOR REFUND HAD CLEARLY PRESCRIBED.— [T]he tax involved in this case is a ten percent (10%) final withholding tax on Metrobank's interest income on its foreign currency denominated loan extended to LHC. x x x Section 2.57 (A) of Revenue Regulations No. 02-98 x x x From the [provision of Sec 2.57 (A) of Revenue Regulations No. 02-98], it may be gleaned that final withholding taxes are considered as full and final payment of the income tax due, and thus, are not subject to any adjustments. Thus, the two (2)-year prescriptive period commences to run from the time the refund is ascertained, ***i.e.*, the date such tax was paid**, and not upon the discovery by the taxpayer of the erroneous or excessive payment of taxes. In the case at bar, it is undisputed that Metrobank's final withholding tax liability in March 2001 was remitted to the BIR on **April 25, 2001**. As such, it only had until **April 25, 2003** to file its administrative and judicial claims for refund. However, while Metrobank's administrative claim was filed on **December 27, 2002**, its corresponding judicial claim was only filed on **September 10, 2003**. Therefore, Metrobank's claim for refund had clearly prescribed.

APPEARANCES OF COUNSEL

Corpuz Ejercito Macasaet & Rivera Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] is the Decision[2] dated April 21, 2008 of the Court of Tax Appeals (CTA) *En Banc*

[1] *Rollo*, pp. 7-18.

[2] *Id.* at 19-34. Penned by Associate Justice Olga Palanca-Enriquez with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, and Caesar A. Casanova concurring. Associate Justice Erlinda P. Uy was on official business.

in C.T.A. EB No. 340, which affirmed the Decision[3] dated August 13, 2007 and the Resolution[4] dated November 14, 2007 of the CTA First Division (CTA Division) in CTA Case No. 6765, and consequently, dismissed petitioner Metropolitan Bank & Trust Company's (Metrobank) claim for refund on the ground of prescription.

The Facts

On June 5, 1997, Solidbank Corporation (Solidbank) entered into an agreement with Luzon Hydro Corporation (LHC), whereby the former extended to the latter a foreign currency denominated loan in the principal amount of US$123,780,000.00 (Agreement). Pursuant to the Agreement, LHC is bound to shoulder all the corresponding internal revenue taxes required by law to be deducted or withheld on the said loan, as well as the filing of tax returns and remittance of the taxes withheld to the Bureau of Internal Revenue (BIR). On September 1, 2000, Metrobank acquired Solidbank, and consequently, assumed the latter's rights and obligations under the aforesaid Agreement.[5]

On March 2, 2001 and October 31, 2001, LHC paid Metrobank the total amounts of US$1,538,122.17[6] and US$1,333,268.31,[7] respectively. Pursuant to the Agreement, LHC withheld, and eventually paid to the BIR, the ten percent (10%) final tax on the interest portions of the aforesaid payments, on the same months that the respective payments were made to petitioner. In sum, LHC remitted a total of

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[3] *Id.* at 35-48. Penned by Associate Justice Caesar A. Casanova with Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista concurring.

[4] *Id.* at 57-61.

[5] *Id.* at 20-21.

[6] *Id.* at 21. Comprised of US$902,545.47 as principal and US$635,576.70 as interest.

[7] *Id.* Comprised of US$902,545.45 as principal and US$430,722.86 as interest.

US$106,178.69,[8] or its Philippine Peso equivalent of ₱5,296,773.05,[9] as evidenced by LHC's Schedules of Final Tax and Monthly Remittance Returns for the said months.[10]

According to Metrobank, it mistakenly remitted the aforesaid amounts to the BIR as well when they were inadvertently included in its own Monthly Remittance Returns of Final Income Taxes Withheld for the months of March 2001 and October 2001. Thus, on **December 27, 2002**, it filed a letter to the BIR requesting for the refund thereof. Thereafter and in view of respondent the Commissioner of Internal Revenue's (CIR) inaction, Metrobank filed its judicial claim for refund via a petition for review filed before the CTA on **September 10, 2003**, docketed as CTA Case No. 6765.[11]

In defense, the CIR averred that: (*a*) the claim for refund is subject to administrative investigation; (*b*) Metrobank must prove that there was double payment of the tax sought to be refunded; (*c*) such claim must be filed within the prescriptive period laid down by law; (*d*) the burden of proof to establish the right to a refund is on the taxpayer; and (*e*) claims for tax refunds are in the nature of tax exemptions, and as such, should be construed *strictissimi juris* against the taxpayer.[12]

The CTA Division Ruling

In a Decision[13] dated August 13, 2007, the CTA Division denied Metrobank's claims for refund for lack of merit.[14] It ruled that Metrobank's claim relative to the March 2001 final tax

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[8] See *id.* at 21-22. US$63,106.40 in March 2001 and US$43,072.29 in October 2001.

[9] See *id.* ₱3,060,029.24 in March 2001 and ₱2,236,743.81 in October 2001.

[10] See *id*.

[11] See *id*. at 22.

[12] See *id*. at 23.

[13] *Id*. at 35-47.

[14] *Id*. at 47.

was filed beyond the two (2)-year prescriptive period. It pointed out that since Metrobank remitted such payment on **April 25, 2001**, the latter only had until April 25, 2003 to file its administrative and judicial claim for refunds. In this regard, while Metrobank filed its administrative claim well within the aforesaid period, or on **December 27, 2002**, the judicial claim was filed only on **September 10, 2003**. Hence, the right to claim for such refund has prescribed.[15] On the other hand, the CTA Division also denied Metrobank's claim for refund relative to the October 2001 tax payment for insufficiency of evidence.[16]

Metrobank moved for reconsideration,[17] which was partially granted in a Resolution[18] dated November 14, 2007, and thus, was allowed to present further evidence regarding its claim for refund for the October 2001 final tax. However, the CTA Division affirmed the denial of the claim relative to its March 2001 final tax on the ground of prescription.[19] Aggrieved, Metrobank filed a petition for partial review[20] before the CTA *En Banc*, docketed as C.T.A. EB No. 340.

The CTA *En Banc* Ruling

In a Decision[21] dated April 21, 2008, the CTA *En Banc* affirmed the CTA Division's ruling. It held that since Metrobank's March 2001 final tax is in the nature of a final withholding tax, the two (2)-year prescriptive period was correctly reckoned by the CTA Division from the time the same was paid on April 25, 2001. As such, Metrobank's claim

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[15] *Id*. at 41-42.

[16] See *id*. at 42-47.

[17] See motion for reconsideration dated September 5, 2007; *id*. at 49-55.

[18] *Id*. at 57-61.

[19] See *id*. at 59.

[20] Dated December 6, 2007. *Id*. at 62-72.

[21] *Id*. at 19-34.

for refund had already prescribed as it only filed its judicial claim on September 10, 2003.[22]

Hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CTA *En Banc* correctly held that Metrobank's claim for refund relative to its March 2001 final tax had already prescribed.

The Court's Ruling

The petition is without merit.

Section 204 of the National Internal Revenue Code, as amended,[23] provides the CIR with, *inter alia*, the authority to grant tax refunds. Pertinent portions of which read:

> Section 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes*. – The Commissioner may –
>
> x x x x x x x x x
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund. (Emphasis and underscoring supplied)

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[22] *Id*. at 26-33.

[23] Presidential Decree No. 1158, as amended up to Republic Act No. 9504, An Act Amending Sections 22, 24, 34, 35, 51, and 79 of Republic Act No. 8424, As Amended, Otherwise known as the National Internal Revenue Code of 1997, approved on June 17, 2008.

In this relation, Section 229 of the same Code provides for the proper procedure in order to claim for such refunds, to wit:

> Section 229. *Recovery of Tax Erroneously or Illegally Collected*. – **No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided*, *however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphases and underscoring supplied)

As may be gleaned from the foregoing provisions, a claimant for refund must first file an administrative claim for refund before the CIR, prior to filing a judicial claim before the CTA. Notably, both the administrative and judicial claims for refund should be filed within the two (2)-year prescriptive period indicated therein, and that the claimant is allowed to file the latter even without waiting for the resolution of the former in order to prevent the forfeiture of its claim through prescription. In this regard, case law states that "the primary purpose of filing an administrative claim [is] to serve as a notice of warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded. To clarify, Section 229 of the Tax Code – then Section 306 of the old Tax Code – however does not mean that the taxpayer must await the final resolution of its administrative claim for refund, since doing so would be tantamount to the taxpayer's forfeiture

of its right to seek judicial recourse should the two (2)-year prescriptive period expire without the appropriate judicial claim being filed."[24]

In this case, Metrobank insists that the filing of its administrative and judicial claims on December 27, 2002 and September 10, 2003, respectively, were well-within the two (2)-year prescriptive period. Citing *ACCRA Investments Corporation v. Court of Appeals*,[25] *CIR v. TMX Sales, Inc.*,[26] *CIR v. Philippine American Life Insurance, Co.*,[27] and *CIR v. CDCP Mining Corporation*,[28] Metrobank contends that the aforesaid prescriptive period should be reckoned not from April 25, 2001 when it remitted the tax to the BIR, but rather, from the time it filed its Final Adjustment Return or Annual Income Tax Return for the taxable year of 2001, or in April 2002, as it was only at that time when its right to a refund was ascertained.[29]

Metrobank's contention cannot be sustained.

As correctly pointed out by the CIR, the cases cited by Metrobank involved corporate income taxes, in which the corporate taxpayer is required to file and pay income tax on a quarterly basis, with such payments being subject to an adjustment at the end of the taxable year. As aptly put in *CIR v. TMX Sales, Inc.*, "payment of quarterly income tax should only be considered [as] mere installments of the annual tax due. These quarterly tax payments which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax

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[24] See *CIR v. Goodyear Philippines, Inc.*, G.R. No. 216130, August 3, 2016.

[25] 281 Phil. 1060 (1991).

[26] 282 Phil. 199 (1992).

[27] 314 Phil. 349 (1995).

[28] 362 Phil. 75 (1999).

[29] See *rollo*, pp. 12-15, 114-117, and 143-147.

due, to be adjusted at the end of the calendar or fiscal year. x x x Consequently, the two-year prescriptive period x x x should be computed from the time of filing the Adjustment Return or Annual Income Tax Return and final payment of income tax."[30] Verily, since quarterly income tax payments are treated as mere "advance payments" of the annual corporate income tax, there may arise certain situations where such "advance payments" would cover more than said corporate taxpayer's entire income tax liability for a specific taxable year. Thus, it is only logical to reckon the two (2)-year prescriptive period from the time the Final Adjustment Return or the Annual Income Tax Return was filed, since it is only at that time that it would be possible to determine whether the corporate taxpayer had paid an amount exceeding its annual income tax liability.

On the other hand, the tax involved in this case is a ten percent (10%) final withholding tax on Metrobank's interest income on its foreign currency denominated loan extended to LHC. In this regard, Section 2.57 (A) of Revenue Regulations No. 02-98[31] explains the characterization of taxes of this nature, to wit:

Section 2.57. *Withholding of Tax at Source*

(A) *Final Withholding Tax.* – **Under the final withholding tax system[,] the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income.** The liability for payment of the tax rests primarily on the payor as a withholding agent. Thus, in case of his failure to withhold the tax or in case of under withholding, the deficiency tax shall be

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[30] *Supra* note 26, at 207-208.

[31] SUBJECT: Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes, dated April 17, 1998.

collected from the payor/withholding agent. The payee is not required to file an income tax return for the particular income.

The finality of the withholding tax is limited only to the payee's income tax liability on the particular income. It does not extend to the payee's other tax liability on said income, such as when the said income is further subject to a percentage tax. For example, if a bank receives income subject to final withholding tax, the same shall be subject to a percentage tax. (Emphasis and underscoring supplied)

From the foregoing, it may be gleaned that final withholding taxes are considered as full and final payment of the income tax due, and thus, are not subject to any adjustments. Thus, the two (2)-year prescriptive period commences to run from the time the refund is ascertained, ***i.e.*, the date such tax was paid**, and not upon the discovery by the taxpayer of the erroneous or excessive payment of taxes.[32]

In the case at bar, it is undisputed that Metrobank's final withholding tax liability in March 2001 was remitted to the BIR on **April 25, 2001**. As such, it only had until **April 25, 2003** to file its administrative and judicial claims for refund. However, while Metrobank's administrative claim was filed on **December 27, 2002**, its corresponding judicial claim was only filed on **September 10, 2003**. Therefore, Metrobank's claim for refund had clearly prescribed.

Finally, the Court finds untenable Metrobank's resort to the principle of *solutio indebiti* in support of its position.[33] In *CIR v. Manila Electric Company*,[34] the Court rejected the application of said principle to tax refund cases, *viz.*:

In this regard, petitioner is misguided when it relied upon the six (6)-year prescriptive period for initiating an action on the ground of quasi contract or *solutio indebiti* under Article 1145 of the

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[32] See *CIR v. Manila Electric Company*, G.R. No. 181459, June 9, 2014, 725 SCRA 384, 398.

[33] See *rollo*, pp. 16 and 147.

[34] *Supra* note 32.

New Civil Code. There is *solutio indebiti* where: (1) payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause. **Here, there is a binding relation between petitioner as the taxing authority in this jurisdiction and respondent MERALCO which is bound under the law to act as a withholding agent of NORD/LB Singapore Branch, the taxpayer. Hence, the first element of *solutio indebiti* is lacking. Moreover, such legal precept is inapplicable to the present case since the Tax Code, a special law, explicitly provides for a mandatory period for claiming a refund for taxes erroneously paid.**

Tax refunds are based on the general premise that taxes have either been erroneously or excessively paid. Though the Tax Code recognizes the right of taxpayers to request the return of such excess/erroneous payments from the government, they must do so within a prescribed period. Further, "a taxpayer must prove not only his entitlement to a refund, but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim."[35] (Emphasis and underscoring supplied)

In sum, the CTA Division and CTA *En Banc* correctly ruled that Metrobank's claim for refund in connection with its final withholding tax incurred in March 2001 should be denied on the ground of prescription.

WHEREFORE, the petition is **DENIED**. The Decision dated April 21, 2008 of the Court of Tax Appeals *En Banc* in C.T.A. EB No. 340 is hereby **AFFIRMED.**

SO ORDERED.

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

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[35] *Id*. at 399-400.

FIRST DIVISION

[G.R. No. 186421*. April 17, 2017]

ROBERTO P. FUENTES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW: THE ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019); ELEMENTS OF VIOLATION OF SECTION 3(e) OF RA 3019.— [T]he elements of violation of Section 3 (e) of RA 3019 are as follows: (*a*) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (*b*) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (*c*) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions.

2. ID.; ID.; ID.; ELEMENTS, PRESENT IN CASE AT BAR; PETITIONER'S REFUSAL TO ISSUE BUSINESS PERMIT DESPITE COMPLIANCE WITH ALL THE PRE-REQUISITES FOR ITS ISSUANCE WAS COMMITTED WITH MANIFEST PARTIALITY AND EVIDENT BAD FAITH.— ***Anent the first element***, it is undisputed that Fuentes was a public officer, being the Municipal Mayor of Isabel, Leyte at the time he committed the acts complained of. ***As to the second element***, it is worthy to stress that the law provides three modes of commission of the crime, namely, through "manifest partiality", "evident bad faith", and/or "gross negligence." x x x Under these questionable circumstances, the Court is led to believe that Fuentes's refusal to issue a Business Permit to Valenzuela's Triple A was indeed committed with manifest partiality against the latter, and in favor of the other ship chandling operators in the Port of Isabel. As regards the issue of bad faith, while it is within the municipal mayor's

* Part of the Court's case Decongestion Program.

prerogative to suspend, revoke, or refuse to issue Business Permits pursuant to Sections 16 and 444 (b) (3) (iv) of the Local Government Code as an incident of his power to issue the same, it must nevertheless be emphasized that: (*a*) the power to suspend or revoke is premised on the violation of the conditions specified therein; and (*b*) the power to refuse issuance is premised on non-compliance with the pre-requisites for said issuance. In the exercise of these powers, the mayor must observe due process in that it must afford the applicant or licensee notice and opportunity to be heard. Here, it is clear that Valenzuela had complied with all the pre-requisites for the issuance of a Business Permit for Triple A, as her application already contained the prior approval of the other concerned officials of the LGU. x x x ***Anent the third and last element***, suffice it to say that Fuentes's acts of refusing to issue a Business Permit in Valenzuela's favor, coupled with his issuance of the unnumbered Memorandum which effectively barred Triple A from engaging in its ship chandling operations without such Business Permit, caused some sort of undue injury on the part of Valenzuela. x x x Under prevailing case law, "[p]roof of the extent of damage is not essential, it being sufficient that the injury suffered or the benefit received is perceived to be substantial enough and not merely negligible."

3. ID.; ID.; ID.; PROPER PENALTY FOR VIOLATION OF SECTION 3(e) OF RA 3019.— As regards the proper penalty to be imposed on Fuentes, Section 9(a) of RA 3019 states that the prescribed penalties for violation of the aforesaid crime includes, *inter alia*, imprisonment for a period of six (6) years and one (1) month to fifteen (15) years, and perpetual disqualification from public office. Thus, the *Sandiganbayan* correctly sentenced him to suffer the penalty of imprisonment for an indeterminate period of six (6) years and one (1) month, as minimum, to ten (10) years and six (6) months, as maximum, with perpetual disqualification from public office.

4. ID.; ID.; ID.; ID.; CIVIL LIABILITY; AWARD OF TEMPERATE DAMAGES IS PROPER WHERE PRIVATE COMPLAINANT SUFFERED PECUNIARY LOSS BUT THE AMOUNT THEREOF WAS NOT PROVEN WITH CERTAINTY.— [T]he Court deems it proper to modify the award of damages in Valenzuela's favor.

> To recapitulate, the *Sandiganbayan* awarded her ₱200,000.00 as nominal damages occasioned by Fuentes's non-issuance of a Business Permit to Triple A. As defined under Article 2221 of the Civil Code, nominal damages are "recoverable where a legal right is technically violated and must be vindicated against an invasion that has **produced no actual present loss of any kind** or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown." In this case, however, it is clear that Valenzuela suffered some sort of pecuniary loss due to the suspension of Triple A's ship chandling operations, albeit the amount thereof was not proven with certainty. Thus, the award of temperate, and not nominal, damages, is proper.

APPEARANCES OF COUNSEL

Joselito Oliveros for petitioner.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated September 30, 2008 and the Resolution[3] dated February 16, 2009 of the *Sandiganbayan* in Crim. Case No. 28342, which found petitioner Roberto P. Fuentes[4] (Fuentes) guilty beyond reasonable doubt of violation of Article 3 (e) of Republic Act No. (RA) 3019, entitled the "Anti-Graft and Corrupt Practices Act."[5]

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[1] *Rollo*, pp. 8-64.

[2] *Id.* at 66-104. Penned by Associate Justice Alexander G. Gesmundo with Presiding Justice Diosdado M. Peralta (now a member of this Court) and Associate Justice Rodolfo A. Ponferrada concurring.

[3] *Id.* at 105-129. Penned by Associate Justice Alexander G. Gesmundo with Associate Justices Norberto Y. Geraldez and Rodolfo A. Ponferrada concurring.

[4] "Roberto P. Fuentes, Jr." in some parts of the records. See *rollo* pp. 174 and 180.

[5] Approved on August 17, 1960.

The Facts

The instant case stemmed from an Information charging Fuentes of violation of Article 3 (e) of RA 3019, the accusatory portion of which states:

> That on January 8, 2002 and for sometime prior or subsequent thereto at the Municipality of Isabel, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, above-named accused ROBERTO P. FUENTES, a high-ranking public officer, being the Municipal Mayor of Isabel, Leyte, in such capacity and committing the offense in relation to office, with evident bad faith and manifest partiality, did then and there, willfully, unlawfully and criminally cause undue injury to private complainant Fe N. Valenzuela by then and there refusing for unreasonable length of time, to renew the latter's Business Permit to engage in Ship Chandling Services in the Port of Isabel without any legal basis or reason despite the fact that Fe N. Valenzuela has complied with all the requirements and has been operating the Ship Chandling Services in the Port of Isabel since 1993, which act caused damage to the perishable ship provisions of Fe N. Valenzuela for M/V Ace Dragon and a denial of her right to engage in a legitimate business thereby causing damage and prejudice to Fe N. Valenzuela.
>
> CONTRARY TO LAW.[6]

On September 15, 2006, Fuentes pleaded "not guilty" to the aforesaid charge.[7]

The prosecution alleged that private complainant Fe Nepomuceno Valenzuela (Valenzuela) is the sole proprietor of Triple A Ship Chandling and General Maritime Services (Triple A), which was operating in the Port of Isabel, Leyte since 1993 until 2001 through the Business Permits issued by the Local Government Unit of Isabel (LGU) during the said period. However, in 2002, Fuentes, then Mayor of Isabel, refused to sign Triple A's Business Permit, despite: (*a*) Valenzuela's payment of the renewal fees; (*b*) all the other municipal officers of the LGU having signed the same, thereby signifying their

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[6] *Rollo*, pp. 66-67.

[7] *Id.* at 67.

approval thereto; and (*c*) a Police Clearance[8] certifying that Valenzuela had no derogatory records in the municipality. Initially, Triple A was able to carry out its business despite the lack of the said Business Permit by securing temporary permits with the Port Management Office as well as the Bureau of Customs (BOC). However, Triple A's operations were shut down when the BOC issued a Cease and Desist Order[9] after receiving Fuentes's unnumbered Memorandum[10] alleging that Valenzuela was involved in smuggling and drug trading. This caused the BOC to require Valenzuela to secure a Business Permit from the LGU in order to resume Triple A's operations. After securing the Memorandum, Valenzuela wrote to Fuentes pleading that she be issued a Business Permit, but the latter's security refused to receive the same. Valenzuela likewise obtained certifications and clearances from Isabel Chief of Police Martin F. Tamse (Tamse),[11] Barangay Captain Dino A. Bayron,[12] the Narcotics Group of Tacloban National Police Commission (NAPOLCOM), the Philippine National Police (PNP) Isabel Police Station, and the Police Regional Office 8 of the PNP similarly stating that she is of good moral character, a law-abiding citizen, and has not been charged nor convicted of any crime as per verification from the records of the locality. Despite the foregoing, no Business Permit was issued for Triple A, causing: (*a*) the spoilage of its goods bought in early 2002 for M/V Ace Dragon as it was prohibited from boarding the said goods to the vessel due to lack of Business Permit; and (*b*) the suspension of its operations from 2002 to 2006. In 2007, a business permit was finally issued in Triple A's favor.[13]

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[8] Not attached to the *rollo*.

[9] Not attached to the *rollo*.

[10] Not attached to the *rollo*.

[11] See *rollo*, pp. 194 and 351.

[12] See *id*. at 11.

[13] *Id*. at 69-75.

In his defense, Fuentes averred that as early as 1999, 2000, and 2001, he has been hearing rumors that Valenzuela was engaged in illegal activities such as smuggling and drug trading, but he did not act on the same. However, in 2002, he received written reports from the Prime Movers for Peace and Progress and Isabel Chief of Police Tamse allegedly confirming the said rumors, which prompted him to hold the approval of Valenzuela's Business Permit for Triple A, and to issue the unnumbered Memorandum addressed to port officials and the BOC. Fuentes maintained that if he went on with the approval of such permit and the rumors turned out to be true, many will suffer and will be victimized; on the other hand, if the rumors were false, then only one stands to suffer. Further, Fuentes presented corroborative testimonies of other people, essentially: (*a*) refuting Valenzuela's claim that Triple A was unable to resume operations due to lack of Business Permit; and (*b*) accusing Valenzuela of pulling out her application for Business Permit from the Mayor's Office, which precluded Fuentes from approving the same.[14]

The *Sandiganbayan* Ruling

In a Decision[15] dated September 30, 2008, the *Sandiganbayan* found Fuentes guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of six (6) years and one (1) month, as minimum, to ten (10) years and six (6) months, as maximum, with perpetual disqualification from public office, and ordered to pay Valenzuela the amount of ₱200,000.00 as nominal damages.[16]

The *Sandiganbayan* found that the prosecution had established all the elements of violation of Section 3 (e) of RA 3019, considering that: (*a*) Fuentes was admittedly the Mayor of Isabel, Leyte at the time relevant to the case; (*b*) he singled out Valenzuela's Triple A despite the fact that the rumors relative

[14] *Id*. at 75-83.

[15] *Id*. at 66-104.

[16] *Id*. at 103.

to the illegal smuggling and drug-related activities covered all ship chandlers operating in the Port of Isabel; (*c*) he still refused to approve Valenzuela's Business Permit for Triple A even though she had already secured clearances not only from the other offices of the LGU, but from the PNP itself, exculpating her from any illegal activities; and (*d*) as a result of Fuentes's acts, Valenzuela was unable to operate her ship chandling business through Triple A, thus, causing her undue injury.[17]

Aggrieved, Fuentes moved for reconsideration, which was, however, denied in a Resolution[18] dated February 16, 2009; hence, this petition.

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not the *Sandiganbayan* correctly convicted Fuentes of the crime of violation of Section 3 (e) of RA 3019.

The Court's Ruling

The petition is without merit.

Section 3 (e) of RA 3019 states:

> 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:
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> x x x x
>
> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefit, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

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[17] *Id*. at 85-102.

[18] *Id*. at 105-129.

As may be gleaned above, the elements of violation of Section 3 (e) of RA 3019 are as follows: (*a*) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (*b*) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (*c*) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions.[19]

After a judicious review of the case, the Court is convinced that the *Sandiganbayan* correctly convicted Fuentes of the crime charged, as will be explained hereunder.

Anent the first element, it is undisputed that Fuentes was a public officer, being the Municipal Mayor of Isabel, Leyte at the time he committed the acts complained of.

As to the second element, it is worthy to stress that the law provides three modes of commission of the crime, namely, through "manifest partiality", "evident bad faith", and/or "gross negligence." In *Coloma, Jr. v. Sandiganbayan*,[20] the Court defined the foregoing terms as follows:

"Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence 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 in so far as other persons may be affected. It is the omission of that care which even inattentive

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[19] See *Cambe v. Ombudsman*, G.R. Nos. 212014-15, December 6, 2016, citing *Presidential Commission on Good Government v. Navarro-Gutierrez*, G.R. No. 194159, October 21, 2015, 773 SCRA 434, 446.

[20] 744 Phil. 214 (2014).

and thoughtless men never fail to take on their own property."[21] (Emphasis and underscoring supplied)

In other words, there is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. On the other hand, "evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.[22]

In the instant case, Fuentes's acts were not only committed with manifest partiality, but also with bad faith. As can be gleaned from the records, Fuentes himself testified that according to the rumors he heard, all five (5) ship chandlers operating in the Port of Isabel were allegedly involved in smuggling and drug trading. Yet, it was only Valenzuela's chandling operations through Triple A that was refused issuance of a Business Permit, as evidenced by Business Permits issued to two (2) other chandling services operators in the said port, namely: S.E. De Guzman Ship Chandler and General Maritime Services; and Golden Sea Kers Marine Services. Moreover, if Fuentes truly believed that Valenzuela was indeed engaged in illegal smuggling and drug trading, then he would not have issued Business Permits to the latter's other businesses as well. However, and as aptly pointed out by the *Sandiganbayan*, Fuentes issued a Business Permit to Valenzuela's other business, Gemini Security, which provides security services to vessels in the Port of Isabel. Under these questionable circumstances, the Court is led to believe that Fuentes's refusal to issue a Business Permit to Valenzuela's Triple A was indeed committed with manifest partiality against

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[21] *Id.* at 229, citing *Fonacier v. Sandiganbayan*, 308 Phil. 660, 693-694 (1994).

[22] *Uriarte v. People*, 540 Phil. 474, 494 (2006); citations omitted.

the latter, and in favor of the other ship chandling operators in the Port of Isabel.

As regards the issue of bad faith, while it is within the municipal mayor's prerogative to suspend, revoke, or refuse to issue Business Permits pursuant to Sections 16[23] and 444 (b) (3) (iv)[24] of the Local Government Code as an incident of his power to issue the same, it must nevertheless be emphasized that: (*a*) the power to suspend or revoke is premised on the

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[23] Section 16 of the Local Government Code reads:

Section 16. *General Welfare*. – Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental of its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of the inhabitants.

[24] Section 444 (b)(3) (iv) of the Local Government Code reads:

Section 444. The Chief Executive: Powers, Duties, Functions and Compensation. – x x x

(b) For effecient, effective and economical governance the purpose of which is the general welfare of the municipal and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

x x x x x x x x x

(3) Initiate and maximize the generation of resources and revenues, and apply the same to the implementation of development plans, program objectives and priorities as provided for under Section 18 of this Code, particularly those resources and revenues programmed for agro-industrial development and country-wide growth and progress and relative thereto, shall:

x x x x x x x x x

(iv) Issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance.

violation of the conditions specified therein; and (*b*) the power to refuse issuance is premised on non-compliance with the pre-requisites for said issuance. In the exercise of these powers, the mayor must observe due process in that it must afford the applicant or licensee notice and opportunity to be heard.[25]

Here, it is clear that Valenzuela had complied with all the pre-requisites for the issuance of a Business Permit for Triple A, as her application already contained the prior approval of the other concerned officials of the LGU. In fact, Valenzuela even submitted numerous certifications issued by various law enforcement agencies clearing her of any kind of participation from the alleged illegal smuggling and drug trading activities in the Port of Isabel. Despite these, Fuentes still refused to issue a Business Permit for Valenzuela's Triple A without affording her an opportunity to controvert the rumors against her. Worse, he even issued the unnumbered Memorandum which effectively barred Triple A from conducting its ship chandling operations without a Business Permit. Quite plainly, if Fuentes truly believed the rumors that Valenzuela was indeed engaged in illegal activities in the Port of Isabel, then he should have already acted upon it in the years 1999, 2000, and 2001, or when he allegedly first heard about them. However, Fuentes's belated action only in 2002 – which was done despite the clearances issued by various law enforcement agencies exonerating Valenzuela from such activities – speaks of evident bad faith which cannot be countenanced.

Anent the third and last element, suffice it to say that Fuentes's acts of refusing to issue a Business Permit in Valenzuela's favor, coupled with his issuance of the unnumbered Memorandum which effectively barred Triple A from engaging in its ship chandling operations without such Business Permit, caused some sort of undue injury on the part of Valenzuela. Undeniably, such suspension of Triple

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[25] See *Lim v. Court of Appeals*, 435 Phil. 857, 867 (2002).

A's ship chandling operations prevented Valenzuela from engaging in an otherwise lawful endeavor for the year 2002. To make things worse, Valenzuela was also not issued a Business Permit for the years 2003, 2004, 2005, and 2006, as it was only in 2007 that such permit was issued in Triple A's favor. Under prevailing case law, "[p]roof of the extent of damage is not essential, it being sufficient that the injury suffered or the benefit received is perceived to be substantial enough and not merely negligible."[26]

In view of the foregoing, Fuentes committed a violation of Section 3 (e) of RA 3019, and hence, must be held criminally liable therefor.

As regards the proper penalty to be imposed on Fuentes, Section 9 (a)[27] of RA 3019 states that the prescribed penalties for violation of the aforesaid crime includes, *inter alia*, imprisonment for a period of six (6) years and one (1) month to fifteen (15) years, and perpetual disqualification from public office. Thus, the *Sandiganbayan* correctly sentenced him to suffer the penalty of imprisonment for an indeterminate period of six (6) years and one (1) month, as minimum, to ten (10) years and six (6) months, as maximum, with perpetual disqualification from public office.

Finally, the Court deems it proper to modify the award of damages in Valenzuela's favor. To recapitulate, the *Sandiganbayan*

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[26] *Garcia v. Sandiganbayan*, 730 Phil. 521, 542 (2014), citing *Reyes v. People of the Philippines*, 641 Phil. 91, 107 (2010).

[27] Section 9(a) of RA 3019 reads:

Section 9. *Penalties for violations*. – (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than six years and one month nor more than fifteen years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

awarded her ₱200,000.00 as nominal damages occasioned by Fuentes's non-issuance of a Business Permit to Triple A. As defined under Article 2221[28] of the Civil Code, nominal damages are "recoverable where a legal right is technically violated and must be vindicated against an invasion that has **produced no actual present loss of any kind** or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown."[29] In this case, however, it is clear that Valenzuela suffered some sort of pecuniary loss due to the suspension of Triple A's ship chandling operations, albeit the amount thereof was not proven with certainty. Thus, the award of temperate, and not nominal, damages, is proper. The Court's pronouncement in *Evangelista v. Spouses Andolong*[30] is relevant on this matter:

> In contrast, **under Article 2224 [of the Civil Code], temperate or moderate damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty**. This principle was thoroughly explained in *Araneta v. Bank of America* [148-B Phil. 124 (1971)], which cited the Code Commission, to wit:
>
> > The Code Commission, in explaining the concept of temperate damages under Article 2224, makes the following comment:
> >
> > > In some States of the American Union, temperate damages are allowed. There are cases where from the nature of the case, definite proof of pecuniary loss cannot

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[28] Article 2221 of the Civil Code reads:

Article 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

[29] *Seven Brothers Shipping Corporation v. DMC-Construction Resources, Inc.*, G.R. No. 193914, November 26, 2014, 743 SCRA 33, 43, citing *Francisco v. Ferrer*, 405 Phil. 741, 751 (2001).

[30] See G.R. No. 221770, November 16, 2016.

> be offered, although the court is convinced that there has been such loss. For instance, injury to one's commercial credit or to the goodwill of a business firm is often hard to show with certainty in terms of money. Should damages be denied for that reason? The judge should be empowered to calculate moderate damages in such cases, rather than that the plaintiff should suffer, without redress from the defendant's wrongful act.

Thus, in *Tan v. OMC Carriers, Inc.* [654 Phil. 443 (2011)], temperate damages were rightly awarded because plaintiff suffered a loss, although definitive proof of its amount cannot be presented as the photographs produced as evidence were deemed insufficient. Established in that case, however, was the fact that respondent's truck was responsible for the damage to petitioner's property and that petitioner suffered some form of pecuniary loss. In *Canada v. All Commodities Marketing Corporation* [590 Phil. 342 (2008)], temperate damages were also awarded wherein respondent's goods did not reach the Pepsi Cola Plant at Muntinlupa City as a result of the negligence of petitioner in conducting its trucking and hauling services, even if the amount of the pecuniary loss had not been proven. In *Philtranco Service Enterprises, Inc. v. Paras* [686 Phil. 736 (2012)], the respondent was likewise awarded temperate damages in an action for breach of contract of carriage, even if his medical expenses had not been established with certainty. In *People v. Briones* [398 Phil. 31 (2000)], in which the accused was found guilty of murder, temperate damages were given even if the funeral expenses for the victim had not been sufficiently proven.

Given these findings, we are of the belief that temperate and not nominal damages should have been awarded, considering that it has been established that respondent herein suffered a loss, even if the amount thereof cannot be proven with certainty.

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Consequently, in computing the amount of temperate or moderate damages, it is usually left to the discretion of the courts, but the amount must be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory.

Here, we are convinced that respondent sustained damages to its conveyor facility due to petitioner's negligence. Nonetheless, for failure of respondent to establish by competent evidence the exact amount of damages it suffered, we are constrained to award temperate damages.

Considering that the lower courts have factually established that the conveyor facility had a remaining life of only five of its estimated total life of ten years during the time of the collision, then the replacement cost of ₱7,046,351.84 should rightly be reduced to 50% or ₱ 3,523,175.92. This is a fair and reasonable valuation, having taking into account the remaining useful life of the facility.[31] (Emphases and underscoring supplied)

Under these circumstances, the Court holds that the award of temperate damages in the amount of ₱300,000.00 is proper, considering that Valenzuela's net income from the previous year, 2001, was ₱750,000.00. Further, such amount shall earn legal interest of six percent (6%) per annum from finality of this Decision until fully paid, in light of prevailing jurisprudence.[32]

WHEREFORE, the petition is **DENIED**. The Decision dated September 30, 2008 and the Resolution dated February 16, 2009 of the *Sandiganbayan* in Crim. Case No. 28342 are hereby **AFFIRMED**. Petitioner Roberto P. Fuentes is found **GUILTY** beyond reasonable doubt of violating Section 3 (e) of Republic Act No. 3019, entitled the "Anti-Graft and Corrupt Practices Act," and accordingly, sentenced to suffer the penalty of imprisonment for an indeterminate period of six (6) years and one (1) month, as minimum, to ten (10) years and six (6) months, as maximum, with perpetual disqualification from public office, and is ordered to pay private complainant Fe Nepomuceno Valenzuela the amount of ₱300,000.00 as temperate damages, with legal interest of six percent (6%) per annum from finality of this Decision until fully paid.

SO ORDERED.

Sereno, C.J. (Chairperson), Velasco, Jr.,[**] *del Castillo,* and *Caguioa, JJ.,* concur.

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[31] See *id.*, citing *Seven Brothers Shipping Corporation v. DMC-Construction Resources, Inc.*, G.R. No. 193914, November 26, 2014, 743 SCRA 33, 44-46; citations omitted.

[32] See *Nacar v. Gallery Frames*, 716 Phil. 267, 274-283 (2013).

[**] Designated additional member per raffle dated June 8, 2009.

FIRST DIVISION

[G.R. No. 186717. April 17, 2017]

REPUBLIC OF THE PHILIPPINES, represented by the ANTI-MONEY LAUNDERING COUNCIL, *petitioner, vs.* **JOCELYN I. BOLANTE, OWEN VINCENT D. BOLANTE, MA. CAROL D. BOLANTE, ALEJO LAMERA, CARMEN LAMERA, EDNA CONSTANTINO, ARIEL C. PANGANIBAN, KATHERINE G. BOMBEO, SAMUEL S. BOMBEO, MOLUGAN FOUNDATION, SAMUEL G. BOMBEO, JR., and NATIONAL LIVELIHOOD DEVELOPMENT CORPORATION (Formerly Livelihood Corporation),** *respondents.*

[G.R. No. 190357. April 17, 2017]

REPUBLIC OF THE PHILIPPINES, represented by the ANTI-MONEY LAUNDERING COUNCIL, *petitioner, vs.* **HON. WINLOVE M. DUMAYAS, Presiding Judge of Branch 59, Regional Trial Court in Makati City, JOCELYN I. BOLANTE, ARIEL C. PANGANIBAN, DONNIE RAY G. PANGANIBAN, EARL WALTER G. PANGANIBAN, DARRYL G. PANGANIBAN, GAVINA G. PANGANIBAN, JAYPEE G. PANGANIBAN, SAMUEL S. BOMBEO, KATHERINE G. BOMBEO, SAMUEL G. BOMBEO, JR., NATIONAL LIVELIHOOD DEVELOPMENT CORPORATION (FORMERLY LIVELIHOOD CORPORATION), MOLUGAN FOUNDATION, ASSEMBLY OF GRACIOUS SAMARITANS FOUNDATION, INC., ONE ACCORD CHRISTIAN COMMUNITY ENDEAVOR FOR SALVATION & SUCCESS THROUGH POVERTY ALLEVIATION, INC., SOCIETY'S MULTI-PURPOSE FOUNDATION, INC., ALLIANCE FOR THE CONSERVATION OF ENVIRONMENT OF PANGASINAN, INC., AND STA. LUCIA EDUCATIONAL ASSOCIATION OF BULACAN, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; THREE WAYS TO COMMIT FORUM SHOPPING.— As we ruled in *Chua v. Metropolitan Bank and Trust Co.*, forum shopping is committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, where the previous case has not yet been resolved (the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and with the same prayer, where the previous case has finally been resolved (the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action, but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).

2. ID.; ID.; ID.; ID.; ELEMENTS OF *LITIS PENDENTIA* ARE PRESENT IN THE TWO PETITIONS FOR ISSUANCE OF A FREEZE ORDER.— [W]e discuss how all the elements of *litis pendentia* are present in the two petitions for the issuance of a freeze order. First, there is identity of parties. In both petitions, the Republic is the petitioner seeking the issuance of a freeze order against the bank deposits and investments. The 24 accounts sought to be frozen in CA-G.R. AMLC No. 00024 were part of the 31 accounts previously frozen in CA-G.R. AMLC No. 00014, and the holders of these accounts were once again named as respondents. Second, there is an identity of rights asserted and relief sought based on the same facts. The AMLC filed both petitions in pursuance of its function to investigate suspicious transactions, money laundering activities, and other violations of R.A. 9160 as amended. x x x Both petitions sought the issuance of a freeze order against bank deposits and investments believed to be related to the fertilizer fund scam.

3. ID.; ID.; ID.; ID.; *RES JUDICATA*, DEFINED; REQUISITES TO OPERATE AS A BAR TO SUBSEQUENT PROCEEDINGS CONCUR IN CASE AT BAR.— [T]he judgment in CA-G.R. AMLC No. 00014 barred the proceedings in CA-G.R. AMLC No. 00024 by *res judicata*. *Res judicata* is defined as a matter adjudged, a thing judicially acted upon or decided, or a thing or matter settled by judgment. It operates as a bar to subsequent proceedings by prior judgment when

the following requisites concur: (1) the former judgment is final; (2) it is rendered by a court having jurisdiction over the subject matter and the parties; (3) it is a judgment or an order on the merits; and (4) there is – between the first and the second actions – identity of parties, subject matter, and causes of action. Clearly, the resolution in CA-G.R. AMLC No. 00014 extending the effectivity of the freeze order until 20 December 2008 attained finality upon the failure of the parties to assail it within 15 days from notice. The Resolution was rendered by the CA, which had jurisdiction over applications for the issuance of a freeze order under Section 10 of R.A. 9160 as amended. It was a judgment on the merits by the appellate court, which made a determination of the rights and obligations of the parties with respect to the causes of action and the subject matter. The determination was based on the pleadings and evidence presented by the parties during the summary hearing and their respective memoranda. Finally, there was – between CA-G.R. AMLC No. 00014 and CA-G.R. AMLC No. 00024 – identity of parties, subject matter and causes of action.

4. CRIMINAL LAW; ANTI-MONEY LAUNDERING ACT OF 2001 (RA 9160); THE ANTI-MONEY LAUNDERING COUNCIL (AMLC) IS NOW ALLOWED TO FILE AN *EX PARTE* APPLICATION FOR AN ORDER TO INQUIRE BANK DEPOSITS AND INVESTMENTS; SUCH INQUIRY DOES NOT VIOLATE SUBSTANTIVE AND PROCEDURAL DUE PROCESS.— [W]hile *Eugenio* still provides much needed guidance in the resolution of issues relating to the freeze and bank inquiry orders, the Decision in that case no longer applies insofar as it requires that notice be given to the account holders before a bank inquiry order may be issued. Upon the enactment of R.A. 10167 on 18 June 2012, Section 11 of R.A. 9160 was further amended to allow the AMLC to file an *ex parte* application for an order allowing an inquiry into bank deposits and investments. x x x The constitutionality of Section 11 of R.A. 9160, as presently worded, was upheld by the Court *En Banc* in the recently promulgated *Subido Pagente Certeza Mendoza and Binay Law Offices v. CA*. The Court therein ruled that the AMLC's *ex parte* application for a bank inquiry, which is allowed under Section 11 of R.A. 9160, does not violate substantive due process. There is no such violation, because the physical seizure of the targeted corporeal property is not

contemplated in any form by the law. The AMLC may indeed be authorized to apply *ex parte* for an inquiry into bank accounts, but only in pursuance of its investigative functions akin to those of the National Bureau of Investigation. As the AMLC does not exercise quasi-judicial functions, its inquiry by court order into bank deposits or investments cannot be said to violate any person's constitutional right to procedural due process.

5. ID.; ID.; RA 9160 *VIS-À-VIS* ITS IMPLEMENTING RULES AND REGULATIONS; PROBABLE CAUSE FOR ISSUANCE OF FREEZE ORDER AND PROBABLE CAUSE FOR ISSUANCE OF BANK INQUIRY ORDER, CLARIFIED; FOR THE TRIAL COURT TO ISSUE A BANK INQUIRY ORDER, THERE MUST BE A SHOWING OF SPECIFIC FACTS AND CIRCUMSTANCES THAT PROVIDE A LINK BETWEEN AN UNLAWFUL ACTIVITY OR A MONEY LAUNDERING OFFENSE AND THE ACCOUNT OR MONETARY INSTRUMENT OR PROPERTY SOUGHT TO BE EXAMINED.— Rule 10.2 of the Revised Rules and Regulations Implementing Republic Act No. 9160, as Amended by Republic Act No. 9194, defined probable cause as "such facts and circumstances which would lead a reasonably discreet, prudent or cautious man to believe that an unlawful activity and/or a money laundering offense is about to be, is being or has been committed and that the account or any monetary instrument or property subject thereof sought to be frozen is in any way related to said unlawful activity and/or money laundering offense." As we observed in *Subido*, this definition refers to probable cause for the issuance of a freeze order against an account or any monetary instrument or property subject thereof. Nevertheless, we shall likewise be guided by the pronouncement in *Ligot v. Republic* that "probable cause refers to the sufficiency of the relation between an unlawful activity and the property or monetary instrument." In the issuance of a bank inquiry order, the power to determine the existence of probable cause is lodged in the trial court. x x x For the trial court to issue a bank inquiry order, it is necessary for the AMLC to be able to show specific facts and circumstances that provide a link between an unlawful activity or a money laundering offense, on the one hand, and the account or monetary instrument or property sought to be examined on the other hand.

6. ID.; ID.; ID.; ID.; WHERE THE EVIDENCE SHOWING THE SUBSTANTIVE LINK TYING RESPONDENT AND THE FERTILIZER SCAM TO THE ACCOUNTS OF THE INVOLVED CORPORATION OR FOUNDATION WAS INSUFFICIENT, THERE WAS NO GRAVE ABUSE OF DISCRETION ON THE PART OF THE TRIAL COURT IN DENYING THE APPLICATION FOR A BANK INQUIRY ORDER.— [T]he application for the issuance of a bank inquiry order was supported by only two pieces of evidence: Senate Committee Report No. 54 and the testimony of witness Thelma Espina. We have had occasion to rule that reports of the Senate stand on the same level as other pieces of evidence submitted by the parties, and that the facts and arguments presented therein should undergo the same level of judicial scrutiny and analysis. As courts have the discretion to accept or reject them, no grave error can be ascribed to the RTC for rejecting and refusing to give probative value to Senate Committee Report No. 54. At any rate, Senate Committee Report No. 54 only provided the AMLC with a description of the alleged unlawful activity, which is the fertilizer fund scam. It also named the alleged mastermind of the scam, who was respondent Bolante. The entire case of the AMLC, however, hinged on the following excerpt of Senate Committee Report No. 54: x x x In fact, **at the time that he was Undersecretary, Jocelyn Bolante was** concurrently appointed by the President in other powerful positions: as Acting Chairman of the National Irrigation Administration, as **Acting Chairman of the Livelihood Corporation** x x x. It was this excerpt that led the AMLC to connect the fertilizer fund scam to the suspicious transaction reports earlier submitted to it by PNB. However, the RTC found during trial that respondent Bolante had ceased to be a member of the board of trustees of LIVECOR for 14 months before the latter even made the initial transaction, which was the subject of the suspicious transaction reports. Furthermore, the RTC took note that according to the Audit Report submitted by the Commission on Audit, no part of the ₱728 million fertilizer fund was ever released to LIVECOR. x x x As it stands, the evidence relied upon by the AMLC in 2006 was still the same evidence it used to apply for a bank inquiry order in 2008. Regrettably, this evidence proved to be insufficient when weighed against that presented by the respondents, who were given notice

and the opportunity to contest the issuance of the bank inquiry order pursuant to *Eugenio*. In fine, the RTC did not commit grave abuse of discretion in denying the application.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Adonis Edgar Angelo A. Macam for National Livelihood Dev. Corp. (formerly LIVECOR).

Tiu Law Office for respondents Ariel Panganiban, Katherine Bombeo, Samuel Bombeo, Samuel Bombeo, Jr. & Molugan Foundation in G.R. No. 186717 & respondents Ariel Panganiban, Donnie Ray Panganiban, *et al.* in G.R. No. 190357.

Zulueta Puno & Associates for respondents Jocely Bolante, Owen Vincent Bolante, Ma. Carol Bolante, Alejo Lamera, Carmen Lamera (deceased) and Edna Constantino.

D E C I S I O N

SERENO, *C.J.*:

G.R. No. 186717 is a petition for review on certiorari under Rule 45 of the Rules of Court, with an urgent prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction. The petition seeks to nullify the Court of Appeals (CA) Resolution[1] in CA-G.R. AMLC No. 00024. The CA Resolution denied petitioner's application to extend the freeze order issued on 4 February 2009[2] over the bank deposits and investments of respondents.

G.R. No. 190357 is a petition for certiorari under Rule 65 of the Rules of Court challenging the Resolution[3] and the Order[4]

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[1] *Rollo* (G.R. No. 186717), pp. 58-68. The Resolution dated 27 February 2009 issued by the CA First Division was penned by Associate Justice Sesinando E. Villon, with Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Noel G. Tijam concurring.

[2] *Id.* at 472-483.

[3] *Rollo* (G.R. No. 190357), pp. 42-49. The Resolution dated 3 July 2009 was penned by Presiding Judge Winlove M. Dumayas.

[4] *Id.* at 50; dated 13 November 2009.

issued by the Regional Trial Court of Makati, Branch 59 (RTC), in AMLC Case No. 07-001. The RTC Resolution denied petitioner's application for an order allowing an inquiry into the bank deposits and investments of respondents. The RTC Order denied petitioner's motion for reconsideration.

FACTS

In April 2005, the Philippine National Bank (PNB) submitted to the Anti-Money Laundering Council (AMLC) a series of suspicious transaction reports involving the accounts of Livelihood Corporation (LIVECOR), Molugan Foundation (Molugan), and Assembly of Gracious Samaritans, Inc. (AGS).[5] According to the reports, LIVECOR transferred to Molugan a total amount of ₱172.6 million in a span of 15 months from 2004 to 2005.[6] On 30 April 2004, LIVECOR transferred ₱40 million to AGS, which received another ₱38 million from Molugan on the same day.[7] Curiously, AGS returned the ₱38 million to Molugan also on the same day.[8]

The transactions were reported "suspicious" because they had no underlying legal or trade obligation, purpose or economic justification; nor were they commensurate to the business or financial capacity of Molugan and AGS, which were both lowly capitalized at ₱50,000 each.[9] In the case of Molugan, Samuel S. Bombeo, who holds the position of president, secretary and treasurer, is the lone signatory to the account.[10] In the case of AGS, Samuel S. Bombeo shares this responsibility with Ariel Panganiban.[11]

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[5] *Rollo* (G.R. No. 186717), p. 97.

[6] *Id*.

[7] *Id*. at 98.

[8] *Id*.

[9] *Id*. at 97.

[10] *Id*.

[11] *Id*.

On 7 March 2006, the Senate furnished the AMLC a copy of its Committee Report No. 54[12] prepared by the Committee on Agriculture and Food and the Committee on Accountability of Public Officers and Investigations.[13]

Committee Report No. 54[14] narrated that former Undersecretary of Agriculture Jocelyn I. Bolante (Bolante) requested the Department of Budget and Management to release to the Department of Agriculture the amount of ₱728 million for the purchase of farm inputs under the *Ginintuang Masaganang Ani* Program. This amount was used to purchase liquid fertilizers from Freshan Philippines, Inc., which were then distributed to local government units and congressional districts beginning January 2004. Based on the Audit Report prepared by the Commission on Audit (COA),[15] the use of the funds was characterized by massive irregularities, overpricing, violations of the procurement law and wanton wastage of scarce government resources.

Committee Report No. 54 also stated that at the time that he served as Undersecretary of Agriculture, Bolante was also appointed by President Gloria Macapagal Arroyo as acting Chairman of LIVECOR.

The AMLC issued Resolution No. 75[16] finding probable cause to believe that the accounts of LIVECOR, Molugan and AGS – the subjects of the suspicious transaction reports submitted

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[12] Entitled "TO CONDUCT AN INQUIRY ON THE ALLEGED MISMANAGEMENT AND USE OF THE FERTILIZER FUND OF THE DEPARTMENT OF AGRICULTURE'S *GININTUANG MASAGANANG ANI* PROGRAM TO THE DETRIMENT OF FILIPINO FARMERS WITH THE END IN VIEW OF CHARTING EFFECTIVE POLICIES AND PROGRAM FOR THE AGRICULTURE SECTOR."

[13] *Rollo* (G.R. No. 186717), p. 98.

[14] *Id*. at 104-147.

[15] *Id*. at 760-791; entitled Report on the Audit of the ₱728 million GMA Farm Input Fund.

[16] *Id*. at 97-102; dated 18 September 2006.

by PNB – were related to what became known as the "fertilizer fund scam." The pertinent portion of Resolution No. 75 provides:

> Under the foregoing circumstances, there is probable cause to believe that the accounts of the foundations and its officers are related to the fertilizer fund scam. The release of the amount of ₱728 million for the purchase of farm inputs to the Department of Agriculture was made by Undersecretary Bolante. Undersecretary Bolante was the Acting Chairman of LIVECOR. LIVECOR transferred huge amounts of money to Molugan and AGS, while the latter foundations transferred money to each other. Mr. [Samuel S.] Bombeo was the President, Secretary, and Treasurer of Molugan. He, therefore, played a key role in these transactions. On the other hand, Mr. [Ariel] Panganiban was the signatory to the account of AGS. Without his participation, these transactions could not have been possible.
>
> The acts involved in the "fertilizer scam" may constitute violation of Section 3(e) of Republic Act No. 3019, x x x as well as violation of Republic Act No. 7080 (Plunder).[17]

Thus, the AMLC authorized the filing of a petition for the issuance of an order allowing an inquiry into the six accounts[18] of LIVECOR, Molugan, AGS Samuel S. Bombeo and Ariel Panganiban. The AMLC also required all covered institutions to submit reports of covered transactions and/or suspicious transactions of these entities and individuals, including all the related web of accounts.

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[17] *Id*. at 100.

[18] *Id*. at 101. The accounts are as follows:

Covered Institution	Account Name	Account Number
LBP	LIVECOR	0672102014
PNB	Molugan	2738301148
PNB	Molugan	2738102331
PNB	AGS	2738301164
PNB	Samuel S. Bombeo	2737006738
BPI	Ariel Panganiban	601614338

The petition was filed *ex parte* before the RTC and docketed as AMLC SP Case No. 06-003. On 17 November 2006, the trial court found probable cause and issued the Order prayed for.[19] It allowed the AMLC to inquire into and examine the six bank deposits or investments and the related web of accounts.

Meanwhile, based on the investigation of the Compliance and Investigation Group of the AMLC Secretariat, a total of 70 bank accounts or investments were found to be part of the related web of accounts involved in the fertilizer fund scam.[20]

Accordingly, the AMLC issued Resolution No. 90[21] finding probable cause to believe that these 70 accounts were related to the fertilizer fund scam. It said that the scam may constitute violations of Section 3(e)[22] of Republic Act No. (R.A.) 3019 (Anti-Graft and Corrupt Practices Act) and R.A. 7080 (An Act Defining and Penalizing the Crime of Plunder). The AMLC therefore authorized the filing of a petition for the

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[19] *Id*. at 103.

[20] *Id*. at 151-156.

[21] *Id* at 151-159; dated 26 October 2007.

[22] 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:

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(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

issuance of an order allowing an inquiry into these 70 accounts.[23]

[23] *Id.* at 156-159. The accounts are as follows:

Covered Institution	Account Name	Account Number
AIG Philam Savings Bank, Inc.	Ariel C. Panganiban	5179-8819-4757-9006
AIG Philam Savings Bank, Inc.	Katherine G. Bombeo	5179-8819-1260-4003
Banco de Oro	Samuel S. Bombeo	10160445094
Banco de Oro	Samuel S. Bombeo	12160008687
Banco de Oro	Ariel C. Panganiban	10160465761
Citibank	Katherine Bombeo	8243051259
East West Bank	Molugan	04-02-04043-2
East West Bank	Molugan	4302005295
East West Bank	Samuel S. Bombeo	04-02-01842-9
East West Bank	AGS	04-02-04042-4
East West Bank	AGS	36-02-00572-1
East West Bank	One Accord Christian Community Endeavor for Salvation and Success through Poverty Alleviation	36-02-00574-6
East West Bank	Society's Multi-Purpose Foundation, Inc.	36-02-00226-7
East West Bank	Alliance for the Conservation of the Environment of Pangasinan, Inc.	1502053661
East West Bank	Sta. Lucia Educational Association of Bulacan, Inc.	1502053562
Equitable PCI Bank	Samuel Gomez Bombeo, Jr.	1291-16354-4
Maybank Phils., Inc.	Ace-Alliance for the Conservation of the Environment of Pangasinan, Inc.	0016-500155-3
Maybank Phils., Inc.	Sta. Lucia Educational Association of Bulacan, Inc.	0016-500154-6
Metropolitan Bank & Trust Co.	Ariel C. Panganiban	3-00364790-1
PNB	Samuel S. Bombeo	247-812382-8
PNB	Samuel S. Bombeo	247-525602-9
PNB	LIVECOR	273-850001-9
Phil. Savings Bank	Ariel C. Panganiban	084-121-00180-8

On 14 February 2008, this Court promulgated *Republic v.*

Planters Development Bank	Ariel C. Panganiban or Donnie Ray G. Panganiban	11-59-004301
Planters Development Bank	Ariel C. Panganiban or Donnie Ray G. Panganiban	11-59-004325
Planters Development Bank	Ariel C. Panganiban or Donnie Ray G. Panganiban	11-59-011458
Planters Development Bank	Ariel C. Panganiban or Earl Walter G. Panganiban	11-59-004305
Planters Development Bank	Ariel C. Panganiban or Earl Walter G. Panganiban	11-59-004324
Planters Development Bank	Ariel C. Panganiban or Earl Walter G. Panganiban	11-59-011457
Planters Development Bank	Ariel C. Panganiban or Darryl G. Panganiban	11-59-004332
Planters Development Bank	Ariel C. Panganiban or Darryl G. Panganiban	11-59-004342
Planters Development Bank	Ariel C. Panganiban or Darryl G. Panganiban	11-59-011464
Planters Development Bank	Ariel C. Panganiban or Gavina G. Panganiban	11-59-004335
Planters Development Bank	Ariel C. Panganiban or Gavina G. Panganiban	11-59-011466
Planters Development Bank	Ariel C. Panganiban or Gavina G. Panganiban	11-59-011474
Planters Development Bank	Ariel C. Panganiban or Jaypee G. Panganiban	11-59-04338
Planters Development Bank	Ariel C. Panganiban or Jaypee G. Panganiban	11-59-011465
Phil. Business Bank	Sps. Samuel & Katherine Bombeo	PN0576-03
Phil. Business Bank	Eduardo F. Suerez &/or Ariel C. Panganiban ITF; MKS Finance Corp.	010-00-000438-9
Union Bank	Samuel S. Bombeo	00894582704-2
Insular Life Assurance Co.	Ariel C. Panganiban	Policy No. 2315613
Pru Life Insurance Corp. of UK	Samuel S. Bombeo	Policy No. CTBF013882
Pru Life Insurance Corp. of UK	Samuel S. Bombeo	Policy No. CTBP013882
Manufacturers Life Insurance Co.	Samuel S. Bombeo	Policy No. 8710170009
Standard Insurance Co., Inc.	Samuel S. Bombeo	Policy No. COC-13643688
BPI/MS Insurance Corp.	Ariel C. Panganiban	Policy No. F0005978
Performance Foreign Exchange Corp.	Samuel S. Bombeo, Jr.	2649

Eugenio.[24] We ruled that when the legislature crafted Section 11[25] of R.A. 9160 (Anti-Money Laundering Act of 2001), as

Prudential Bank	Jocelyn I. Bolante	00000-035110-8
Prudential Bank	Jocelyn I. Bolante	00000-038816-9
Prudential Bank	Jocelyn I. Bolante	00000-044834-4
Prudential Bank	Jocelyn I. Bolante	00000-044915-3
Prudential Bank	Jocelyn I. Bolante	00000-046575-8
Prudential Bank	Jocelyn I. Bolante	00055-000023-1
Prudential Bank	Jocelyn I. Bolante	01055-000093-0
Prudential Bank	Jocelyn I. Bolante	01055-000877-4
Prudential Bank	Jocelyn I. Bolante	04055-000032-3
Prudential Bank	Jocelyn I. Bolante	05055-000167-0
Prudential Bank	Jocelyn I. Bolante	06055-000057-5
Prudential Bank	Jocelyn I. Bolante	06055-000138-5
B P I	Jocelyn I. Bolante	020011160000001163007351
B P I	Jocelyn I. Bolante	020011160000001166006794
B P I	Jocelyn I. Bolante	020011160000001166006808
B P I	Jocelyn I. Bolante	020011160000001166009033
B P I	Jocelyn I. Bolante	020011160000001167001579
B P I	Jocelyn I. Bolante	020011160000001167000203
B P I	Jocelyn I. Bolante	020011160000001167001978
Union Bank	Jocelyn I. Bolante	009550000582
Rizal Commercial Banking Corp.	Jocelyn I. Bolante	1249800445
Rizal Commercial Banking Corp.	Jocelyn I. Bolante	249046868
Standard Chartered Bank	Jocelyn I. Bolante	BPY 280851100002150

[24] 569 Phil. 98 (2008).

[25] Section 11. *Authority to Inquire into Bank Deposits*. — Notwithstanding the provisions of Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment with any banking institution or non-bank financial institution upon order of any competent court in cases of violation of this Act, when it has been established that there is probable cause that the deposits or investments are related to an unlawful activity as defined in Section 3(i) hereof or a money laundering offense under Section 4 hereof; except that no court order shall be required in cases involving unlawful activities defined in Sections 3(i)(1), (2) and (12).

To ensure compliance with this Act, the Bangko Sentral ng Pilipinas (BSP) may inquire into or examine any deposit or investment with any banking institution or non-bank financial institution when the examination is made in the course of a periodic or special examination, in accordance with the rules of examination of the BSP.

amended, it did not intend to authorize *ex parte* proceedings for the issuance of a bank inquiry order by the CA. Thus, a bank inquiry order cannot be issued unless notice is given to the account holders.[26] That notice would allow them the opportunity to contest the issuance of the order.

In view of this development, the AMLC issued Resolution No. 40.[27] It authorized the filing of a petition for the issuance of a freeze order against the 70 accounts found to be related to the fertilizer fund scam.

Hence, the Republic filed an *Ex Parte* Petition[28] docketed as CA-G.R. AMLC No. 00014 before the CA, seeking the issuance of a freeze order against the 70 accounts.

The CA issued a freeze order effective for 20 days.[29] The freeze order required the covered institutions of the 70 accounts to desist from and not allow any transaction involving the identified monetary instruments. It also asked the covered institutions to submit a detailed written return to the CA within 24 hours from receipt of the freeze order.

The CA conducted a summary hearing of the application,[30] after which the parties were ordered to submit their memoranda, manifestations and comments/oppositions.[31] The freeze order was later extended for a period of 30 days until 19 August 2008.[32]

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[26] *Republic v. Eugenio*, *supra*.

[27] *Rollo* (G.R. No. 186717), pp. 160-164; dated 21 May 2008.

[28] *Id*. at 74-96; filed on 30 June 2008.

[29] *Id*. at 165-184. The Resolution dated 1 July 2008 issued by the CA First Division was penned by Associate Justice Pampio A. Abarintos, with Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Lucas P. Bersamin (now a Member of this Court) concurring.

[30] *Id*. at 184, 185; conducted on 8 July 2008.

[31] *Id*. at 186-187.

[32] *Id*. at 185-188; Resolution dated 16 July 2008.

Finding that there existed probable cause that the funds transferred to and juggled by LIVECOR, Molugan, and AGS formed part of the ₱728 million fertilizer fund, the CA extended the effectivity of the freeze order for another four months, or until 20 December 2008.[33] The extension covered only 31 accounts,[34] which showed an existing balance based on the returns of the covered institutions.

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[33] *Id*. at 268-296; Resolution dated 19 August 2008.

[34] *Id.* at 273-283. The remaining accounts that show an existing balance are as follows:

Covered Institution	Account Name	Account Number
Banco de Oro	Samuel S. Bombeo	12160008687
Banco de Oro	Ariel C. Panganiban	10160465761
Banco de Oro	Ariel C. Panganiban or Gavina Panganiban	0160444063
Citibank	Katherine Bombeo	8243051259
East West Bank	Molugan	04-02-04043-2
East West Bank	Molugan	4302005295
East West Bank	Samuel S. Bombeo	04-02-01842-9
East West Bank	Alliance for the Conservation of the Environment of Pangasinan, Inc.	1502053661
East West Bank	Sta. Lucia Educational Association of Bulacan, Inc.	1502053562
Maybank Phils., Inc.	Ace-Alliance for the Conservation of the Environment of Pangasinan, Inc.	0016-500155-3
Maybank Phils., Inc.	Samuel S. Bombeo	1016-003434-3
Maybank Phils., Inc.	Samuel S. Bombeo	1716-000118-9
Metropolitan Bank & Trust Co.	Ariel C. Panganiban	3-00364790-1
PNB	Samuel S. Bombeo	247-812382-8
PNB	Samuel S. Bombeo	247-525602-9
PNB	LIVECOR	273-850001-9
PNB	LIVECOR	273-502826-2
Union Bank	Samuel S. Bombeo	00894582704-2
Insular Life Assurance Co.	Ariel C. Panganiban	Policy No. 2315613
Manufacturers Life Insurance Co.	Samuel S. Bombeo	Policy No. 871170009
BPI/MS Insurance Corp.	Ariel C. Panganiban	Policy No. F0005978
BPI/MS Insurance Corp.	Ariel C. Panganiban	Policy No. F0151320

In the meantime, the Republic filed an *Ex Parte* Application[35] docketed as AMLC Case No. 07-001 before the RTC. Drawing on the authority provided by the AMLC through Resolution No. 90, the *ex parte* application sought the issuance of an order allowing an inquiry into the 70 accounts.

The RTC found probable cause and issued the Order prayed for.[36] It allowed the AMLC to inquire into and examine the 70 bank deposits or investments and the related web of accounts.

On 20 October 2008, this Court denied with finality the motion for reconsideration filed by the Republic in *Eugenio*.[37] The Court reiterated that Section 11[38] of R.A. 9160, as then worded, did not allow a bank inquiry order to be issued *ex parte*; and that the concerns

Performance Foreign Exchange Corp.	Samuel S. Bombeo, Jr.	2649
BPI	Jocelyn I. Bolante	1163-0073-51
BPI	Jocelyn I. Bolante	1164-0006-28
BPI	Jocelyn I. Bolante	020011160000001163007351
BPI	Jocelyn I. Bolante	020011160000001166009033
BPI	Jocelyn I. Bolante	020011160000001167001978
Union Bank	Jocelyn I. Bolante	009550000582
Rizal Commercial Banking Corp.	Jocelyn I. Bolante	1249800445
Standard Chartered Bank	Jocelyn I. Bolante	BPY 280851100002150

[35] *Id.* at 189-206.

[36] *Id.* at 246-267; Order dated 25 July 2008.

[37] *Rollo* (G.R. No. 190357), pp. 212-216.

[38] Section 11. *Authority to Inquire into Bank Deposits.*— Notwithstanding the provisions of Republic Act No. 1405, as amended, Republic Act No. 6426, was amended, Republic Act No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment with any banking institution or non-bank financial institution upon order of any competent court in cases of violation of this Act, when it has been established that there is probable cause that the deposits or investments are related to an unlawful activity as defined in Section 3(i) hereof or a money laundering offense under Section 4 hereof; except that no court order shall be required in cases involving unlawful activities defined in Section 3(i)(1), (2) and (12).

To ensure compliance with this Act, the *Bangko Sentral ng Pilipinas* (BSP) may inquire into or examine any deposit or investment with any banking institution or non-bank financial institution when the examination is made in the course of a periodic or special examination, in accordance with the rules of examination of the BSP.

of the Republic about the consequences of this ruling could be more properly lodged in the legislature.

Thus, in order to comply with the ruling in *Eugenio*, the Republic filed an Amended and Supplemental Application[39] in AMLC Case No. 07-001 before the RTC. The Republic sought, after notice to the account holders, the issuance of an order allowing an inquiry into the original 70 accounts plus the six bank accounts that were the subject of AMLC SP Case No. 06-003. A summary hearing thereon ensued.

On the belief that the finality of *Eugenio* constituted a supervening event that might justify the filing of another petition for a freeze order, the AMLC issued Resolution No. 5.[40] The resolution authorized the filing of a new petition for the issuance of a freeze order against 24[41] of the 31 accounts previously frozen by the CA.

[39] *Rollo* (G.R. No. 186717), pp. 333-362; dated 22 December 2008.

[40] *Id.* at 363-365; dated 26 January 2009.

[41] *Id.* at 364-365. The 24 are the following:

Covered Institution	Account Name	Account Number
Banco de Oro	Samuel S. Bombeo	12160008687
Banco de Oro	Ariel C. Panganiban	10160465761
Banco de Oro	Ariel C. Panganiban or	0160444063
	Gavina Panganiban	
Citibank	Katherine Bombeo	8243051259
East West Bank	Molugan	04-02-04043-2
East West Bank	Molugan	4302005295
East West Bank	Samuel S. Bombeo	04-02-01842-9
Maybank Phils., Inc.	Samuel S. Bombeo	1016-003434-3
Maybank Phils., Inc.	Samuel S. Bombeo	1716-000118-9
PNB	Samuel S. Bombeo	247-812382-8
PNB	Samuel S. Bombeo	247-525602-9
PNB	LIVECOR	273-850001-9
PNB	LIVECOR	273-502826-2
Union Bank	Samuel S. Bombeo	00894582704-2
Insular Life Assurance Co.	Ariel C. Panganiban	Policy No. 2315613
Manufacturers Life Insurance Co.	Samuel S. Bombeo	Policy No. 871170009
BPI/MS Insurance Corp.	Ariel C. Panganiban	Policy No. F0005978
Performance Foreign Exchange Corp.	Samuel S. Bombeo, Jr.	2649
BPI	Jocelyn I. Bolante	1164-0006-28
BPI	Jocelyn I. Bolante	020011160000000001163007351

Hence, the Republic filed an Urgent *Ex Parte* Petition[42] docketed as CA-G.R. AMLC No. 00024 before the CA seeking the issuance of a freeze order against the 24 accounts.

In the Resolution dated 4 February 2009,[43] the CA issued a freeze order effective for 20 days. The freeze order required the covered institutions of the 24 accounts to desist from and not allow any transaction involving the identified monetary instruments. It also asked the covered institutions to submit a detailed written return to the CA within 24 hours from receipt of the freeze order.

A summary hearing was conducted by the CA for the purpose of determining whether to modify, lift or extend the freeze order.[44] Thereafter, the parties were required to submit memoranda.

THE CHALLENGED RESOLUTIONS

The assailed CA Resolution dated 27 February 2009[45] denied the application to extend the freeze order issued on 4 February 2009.

The CA found that the Republic had committed forum shopping.[46] Specifically, the appellate court found that the parties

BPI	Jocelyn I. Bolante	020011160000001166009033
BPI	Jocelyn I. Bolante	020011160000001167001978
Union Bank	Jocelyn I. Bolante	009550000582
Rizal Commercial Banking Corp.	Jocelyn I. Bolante	1249800445

[42] *Id*. at 366-404; filed on 2 February 2009.

[43] *Id*. at 472-483. The Resolution issued by the CA First Division was penned by Associate Justice Sesinando E. Villon, with Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Noel G. Tijam concurring.

[44] *Id*. at 64; conducted on 12 February 2009.

[45] *Id*. at 58-68.

[46] *Id*. at 66-67.

in CA-G.R. AMLC No. 00024 were the same as those in CA-G.R. AMLC No. 00014. The petition in CA-G.R. AMLC No. 00024 sought the issuance of a freeze order against the same accounts covered by CA-G.R. AMLC No. 00014. Finally, the rights asserted and reliefs prayed for in both petitions were substantially founded on the same facts, thereby raising identical causes of action and issues.

The CA found no merit in the assertion of the Republic that the ruling in *Eugenio* was a supervening event that prevented the latter from concluding its financial investigation into the accounts covered by the freeze order in CA-G.R. AMLC No. 00014.[47] The CA noted that *Eugenio* was promulgated on 14 February 2008, or almost five months before the Republic filed CA-G.R. AMLC No. 00014 before the CA and AMLC Case No. 07-001 before the RTC. According to the appellate court, since the Republic was faced with the imminent finality of *Eugenio*, it should have taken steps to expedite the conduct of the inquiry and the examination of the bank deposits or investments and the related web of accounts.

At any rate, the CA found that the petition in CA-G.R. AMLC No. 00024 was effectively a prayer for the further extension of the 5-month, 20-day freeze order already issued in CA-G.R. AMLC No. 00014.[48] The extension sought is proscribed under Section 53 of Administrative Circular No. 05-11-04-SC.[49] According to this provision, the effectivity of a freeze order may be extended for good cause shown for a period not exceeding six months.

Aggrieved, the Republic filed the instant petition for review on certiorari with an urgent prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction docketed as G.R. No. 186717.

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

[48] *Id*. at 68.

[49] Entitled "Rules of Procedure in Cases of Civil Forfeiture, Asset Preservation, and Freezing of Monetary Instrument, Property, or Proceeds Representing, Involving, or Relating to an Unlawful Activity or Money Laundering Offense under Republic Act No. 9160, as Amended," dated 15 December 2005.

On 25 March 2009, this Court issued a *Status Quo Ante* Order[50] enjoining the implementation of the assailed CA Resolution.

At the time of the submission of respondents' Comment[51] and petitioner's Consolidated Reply[52] in G.R. No. 186717, the RTC issued the challenged Resolution dated 3 July 2009[53] in AMLC Case No. 07-001. The trial court denied the Republic's application for an order allowing an inquiry into the total of 76 bank deposits and investments of respondents.

The RTC found no probable cause to believe that the deposits and investments of respondents were related to an unlawful activity.[54] It pointed out that the Republic, in support of the latter's application, relied merely on two pieces of evidence: Senate Committee Report No. 54 and the court testimony of witness Thelma Espina of the AMLC Secretariat. According to the RTC, Senate Committee Report No. 54 cannot be taken "hook, line and sinker,"[55] because the Senate only conducts inquiries in aid of legislation. Citing *Neri v. Senate Committee on Accountability of Public Officers and Investigations*,[56] the trial court pronounced that the Senate cannot assume the power reposed in prosecutorial bodies and the courts – the power to determine who are liable for a crime or an illegal activity.[57] On the other hand, the trial court noted that the testimony of the witness merely relied on Senate Committee Report No. 54. The latter "admitted that the AMLC did not bother to confirm the veracity of the statements contained therein."[58]

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[50] *Rollo* (G.R. No. 186717), pp. 520-522.

[51] *Id*. at 537-569 (Respondents Jocelyn I. Bolante, *et al.*), 609-629 (Respondent National Livelihood Development Corporation, formerly LIVECOR), 637-656 (Respondents Ariel Panganiban, *et al*.).

[52] *Id*. at 689-700.

[53] *Rollo* (G.R. No. 190357), pp. 42-49.

[54] *Id*. at 45.

[55] *Id*.

[56] 586 Phil. 135 (2008).

[57] *Rollo* (G.R. No. 190357), pp. 45-46.

[58] *Id*. at 46.

The RTC instead gave credence to the Audit Report prepared by COA. While outlining the irregularities that attended the use of the fertilizer fund, COA also showed that none of the funds were channeled or released to LIVECOR, Molugan or AGS.[59] The trial court also took note of the evidence presented by Bolante that he had ceased to be a member of the board of trustees of LIVECOR on 1 February 2003, or more than 14 months before the transfers were made by LIVECOR to Molugan as indicated in the suspicious transaction reports submitted by PNB.[60] Furthermore, the RTC found that the transfers made by LIVECOR to Molugan and AGS came from the ₱60 million Priority Development Assistance Fund of Senator Joker Arroyo.[61]

The Republic moved for reconsideration, but the motion was denied by the RTC in the challenged Order dated 13 November 2009.[62]

Hence, the Republic filed the instant petition for certiorari docketed as G.R. No. 190357.

The Court resolved to consolidate G.R. No. 190357 with G.R. No. 186717, considering that the issues raised in the petitions were closely intertwined and related.[63] On 6 December 2010, these petitions were given due course, and all parties were required to submit memoranda.[64]

Amid reports that the Office of the Ombudsman (Ombudsman) had filed plunder cases against those involved in the fertilizer fund scam, the Court issued the Resolution dated 16 November 2011.[65] We required the AMLC and the Ombudsman to move in the premises and jointly manifest whether the accounts, subject of the instant petitions, were in any way related to the plunder cases already filed.

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[59] *Id*.

[60] *Id*. at 46-47.

[61] *Id*. at 47-48.

[62] *Id*. at 50.

[63] *Id*. at 513-514; Resolution dated 10 March 2010.

[64] *Id*. at 693-694.

[65] *Id*. at 829-830.

In their compliance dated 14 March 2012,[66] the AMLC and the Ombudsman manifested that the plunder case filed in connection with the fertilizer fund scam included Bolante, but not the other persons and entities whose bank accounts are now the subject of the instant petitions. That plunder case was docketed as SB-11-CRM-0260 before the Second Division of the Sandiganbayan.

ISSUES

The following are the issues for our resolution:

1. Whether the Republic committed forum shopping in filing CA-G.R. AMLC No. 00024 before the CA
2. Whether the RTC committed grave abuse of discretion in ruling that there exists no probable cause to allow an inquiry into the total of 76 deposits and investments of respondents

OUR RULING

I.

The Republic committed forum shopping.

As we ruled in *Chua v. Metropolitan Bank and Trust Co.*,[67] forum shopping is committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, where the previous case has not yet been resolved (the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and with the same prayer, where the previous case has finally been resolved (the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action, but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).

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[66] *Rollo* (G.R. No. 186717), pp. 1282-1290.

[67] 613 Phil. 143 (2009).

In the instant petitions, the Republic focused its energies on discussing why it did not commit forum shopping on the ground of *litis pendentia*. In its Memorandum, it argued:

> While it is true that a previous freeze order was issued in *CA-G.R. AMLC No. 00014* covering some of the accounts subject of *CA-G.R. AMLC No. 00024*, *CA-G.R. AMLC No. 00014* had already attained finality when the second petition was filed, neither petitioner nor any of the respondents interposed an appeal therefrom, pursuant to Section 57 of the *Rule of Procedure in Cases of Civil Forfeiture, etc.*. The principle of *litis pendentia* presupposes the pendency of at least one case when a second case is filed. Such situation does not exist in the present controversy since *CA-G.R. AMLC No. 00014* was no longer pending but has attained finality when the second petition was filed.[68]

In a clear illustration of the phrase, *out of the frying pan and into the fire*, the Republic vigorously resisted the application of forum shopping on the ground of *litis pendentia*, only to unwittingly admit that it had possibly committed forum shopping on the ground of *res judicata*.

We are not even sure where the Republic got the notion that the CA found "that the filing of the second petition for freeze order constitutes forum shopping on the ground of *litis pendentia*."[69] In its assailed Resolution, the appellate court aptly cited *Quinsay v. CA*,[70] stating that "forum shopping concurs not only when a final judgment in one case will amount to *res judicata* in another, but also where the elements of *litis pendentia* are present."[71] It then went on to enumerate the aforecited elements of *litis pendentia*, namely: (1) identity of parties, or those that represent the same interests in both actions; (2) identity of rights asserted and relief sought, with the relief founded on the same facts; and (3) identity of the two preceding particulars, such that any judgment rendered in one proceeding will,

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[68] *Rollo* (G.R. No. 185717), p. 1202.

[69] *Id*. at 29.

[70] 393 Phil. 838 (2000).

[71] *Rollo* (G.R. No. 186717), p. 66.

regardless of which party is successful, amount to *res judicata* in the other. The CA only discussed how these elements were present in CA-G.R. AMLC No. 00024 and CA-G.R. AMLC No. 00014 in relation to each other. Nowhere did the CA make any categorical pronouncement that the Republic had committed forum shopping on the ground of *litis pendentia*.

With this clarification, we discuss how all the elements of *litis pendentia* are present in the two petitions for the issuance of a freeze order.

First, there is identity of parties. In both petitions, the Republic is the petitioner seeking the issuance of a freeze order against the bank deposits and investments. The 24 accounts sought to be frozen in CA-G.R. AMLC No. 00024 were part of the 31 accounts previously frozen in CA-G.R. AMLC No. 00014,[72] and the holders of these accounts were once again named as respondents.

Second, there is an identity of rights asserted and relief sought based on the same facts. The AMLC filed both petitions in pursuance of its function to investigate suspicious transactions, money laundering activities, and other violations of R.A. 9160 as amended.[73] The law also granted the AMLC the authority to make an *ex parte* application before the CA for the freezing of any monetary instrument or property alleged to be the proceeds of any unlawful activity, as defined in Section 3(i) thereof.[74]

Both petitions sought the issuance of a freeze order against bank deposits and investments believed to be related to the fertilizer fund scam. Notably, while the petition in CA-G.R. AMLC No. 00014 narrated the facts surrounding the issuance of AMLC Resolution Nos. 75 and 40,[75] the petition in CA-G.R. AMLC No. 00024 used as its foundation the previous grant of the freeze order in CA-G.R. AMLC No. 00014 and the extensions

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[72] *See* notes 34 and 41.

[73] R.A. 9160, Section 7(5).

[74] *Id*. at Section 7(6).

[75] *Rollo* (G.R. No. 186717), pp. 80-85.

of its effectivity.[76] Nevertheless, both petitions highlighted the role of Senate Committee Report No. 54 in providing AMLC with the alleged link between the fertilizer fund scam and the bank deposits and investments sought to be frozen.[77]

Third, the judgment in CA-G.R. AMLC No. 00014 barred the proceedings in CA-G.R. AMLC No. 00024 by *res judicata.*

Res judicata is defined as a matter adjudged, a thing judicially acted upon or decided, or a thing or matter settled by judgment.[78] It operates as a bar to subsequent proceedings by prior judgment when the following requisites concur: (1) the former judgment is final; (2) it is rendered by a court having jurisdiction over the subject matter and the parties; (3) it is a judgment or an order on the merits; and (4) there is – between the first and the second actions – identity of parties, subject matter, and causes of action.[79]

Clearly, the resolution in CA-G.R. AMLC No. 00014 extending the effectivity of the freeze order until 20 December 2008 attained finality upon the failure of the parties to assail it within 15 days from notice. The Resolution was rendered by the CA, which had jurisdiction over applications for the issuance of a freeze order under Section 10[80] of R.A. 9160 as amended. It was a judgment on the merits by the appellate court, which made a determination of the rights and obligations of the parties with respect to the causes of action and the subject matter.[81] The determination was based

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[76] *Id*. at 376-384.

[77] *Id*. at 83-85, 391-394.

[78] *Riviera Golf Club, Inc. v. CAA Holdings, B.V.,* G.R. No. 173783, 17 June 2015, 758 SCRA 691.

[79] *Mallion v. Alcantara,* 536 Phil. 1049 (2006).

[80] Section 10. *Freezing of Monetary Instrument or Property.*— The Court of Appeals, upon application *ex parte* by the AMLC and after determination that probable cause exists that any monetary instrument or property is in any way related to an unlawful activity as defined in Section 3(i) hereof, may issue a freeze order which shall be effective immediately. The freeze order shall be for a period of twenty (20) days unless extended by the court.

[81] *De Leon v. De Llana,* G.R. No. 212277, 11 February 2015, 750 SCRA 53.

on the pleadings and evidence presented by the parties during the summary hearing and their respective memoranda. Finally, there was – between CA-G.R. AMLC No. 00014 and CA-G.R. AMLC No. 00024 – identity of parties, subject matter and causes of action.

The Republic's commission of forum shopping is further illustrated by its awareness that the effectivity of the freeze order in CA-G.R. AMLC No. 00014 had already been extended to 5 months and 20 days. Under Section 53[82] of A.M. No. 05-11-04-SC,[83] the original 20-day effectivity period of a freeze order may only be extended by the CA for good cause for a period not exceeding six months. Because of this predicament, the Republic sought to avoid seeking a further extension that is clearly prohibited by the rules by allowing the extended freeze order in CA-G.R. AMLC No. 00014 to lapse on 20 December 2008. Instead, it filed the petition in CA-G.R. AMLC No. 00024 alluding to the exact same facts and arguments but citing a special factual circumstance that allegedly distinguished it from CA-G.R. AMLC No. 00014.

The Republic argued that CA-G.R. AMLC No. 00024 was filed at the advent of *Eugenio*. The ruling was a supervening event that prevented the Republic from concluding its exhaustive financial investigation within the auspices of the bank inquiry order granted by the RTC in AMLC Case No. 07-001 and the

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[82] Section 53. *Freeze Order.*—

(a) *Effectivity; post-issuance hearing*. — The freeze order shall be effective immediately for a period of twenty days. Within the twenty-days period, the court shall conduct a summary hearing, with notice to the parties, to determine whether or not to modify or lift the freeze order, or extend its effectivity as hereinafter provided.

(b) *Extension*.— On motion of the petitioner filed before the expiration of twenty days from issuance of a freeze order, the court may for good cause extend its effectivity for a period not exceeding six months.

[83] Entitled "Rules of Procedure in Cases of Civil Forfeiture, Asset Preservation, and Freezing of Monetary Instrument, Property, or Proceeds Representing, Involving, or Relating to an Unlawful Activity or Money Laundering Offense under Republic Act No. 9160, as Amended," dated 15 December 2005.

freeze order granted by the CA in CA-G.R. AMLC No. 00014.[84]

We find no merit in this argument. The promulgation of *Eugenio* was not a supervening event under the circumstances. "Supervening events refer to facts which transpire after judgment has become final and executory or to new circumstances which developed after the judgment has acquired finality, including matters which the parties were not aware of prior to or during the trial as they were not yet in existence at that time."[85]

As aptly pointed out by the appellate court, *Eugenio* was promulgated five months before the filing of the petition in CA-G.R. AMLC No. 00014. Indeed the Decision therein only attained finality upon the denial of the motion for reconsideration on 20 October 2008, or before the filing of the petition in CA-G.R. AMLC No. 0002. The ruling, however, cannot be regarded as a matter that the parties were not aware of prior to or during the trial of CA-G.R. AMLC No. 00014.

In fact, it was because of *Eugenio* that CA-G.R. AMLC No. 00014 was filed in the first place.

We have not painstakingly narrated all the relevant facts of these cases for nothing. It should be noted that before the ruling in *Eugenio*, the AMLC commenced its investigations into the fertilizer fund scam by filing petitions for bank inquiry orders. Thus, it issued Resolutions No. 75 and 90, both authorizing the filing of petitions for the issuance of orders allowing an inquiry into the pertinent bank deposits and investments.

According to the Court in *Eugenio*, "a requirement that the application for a bank inquiry order be done with notice to the account holder will alert the latter that there is a plan to inspect his bank account on the belief that the funds therein are involved in an unlawful activity or money laundering offense."[86] Alarmed by the implications of this ruling, the AMLC changed tack and

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[84] *Rollo* (G.R. No. 186717), pp. 40-41, 1203-1204.

[85] *Natalia Realty, Inc. v. CA,* 440 Phil. 1 (2002).

[86] *Republic v. Eugenio, supra* at 125.

decided to pursue the only other remedy within its power to obtain *ex parte* at the time. Hence, it issued Resolution No. 40 authorizing the filing of CA-G.R. AMLC No. 00014 for the issuance of a freeze order to preserve the 70 bank deposits and investments and prevent the account holders from withdrawing them. The pertinent portion of AMLC Resolution No. 40 provides:

> In the Resolution No. 90, dated October 26, 2007, the Council found probable cause that the accounts of the subject individuals and entities are related to the fertilizer fund scam and resolved to authorize the filing of a petition for the issuance of a freeze order allowing inquiry into the following accounts:
>
> x x x x x x x x x
>
> However, in Republic vs. Eugenio (G.R. No. 174629, February 14, 2008), the Supreme Court ruled that proceedings in applications for issuance of an order allowing inquiry should be conducted after due notice to the respondents/account holders.
>
> In the light of the aforesaid ruling of the Supreme Court, the Council resolved to:
>
> 1. Authorize the AMLC Secretariat to file with the Court of Appeals, through the Office of the Solicitor General, a petition for freeze order against the following bank accounts and all related web of accounts wherever these may be found:[87]

Notably, it was only after the freeze order had been issued that AMLC Case No. 07-001 was filed before the RTC to obtain a bank inquiry order covering the same 70 accounts.

Presently, while *Eugenio* still provides much needed guidance in the resolution of issues relating to the freeze and bank inquiry orders, the Decision in that case no longer applies insofar as it requires that notice be given to the account holders before a bank inquiry order may be issued. Upon the enactment of R.A. 10167 on 18 June 2012, Section 11 of R.A. 9160 was further amended to allow the AMLC to file an *ex parte* application for an order allowing an inquiry into bank deposits and investments.

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[87] *Rollo* (G.R. No. 186717), pp. 69-71.

Section 11 of R.A. 9160 now reads:

Section 11. *Authority to Inquire into Bank Deposits.* — Notwithstanding the provisions of Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment, including related accounts, with any banking institution or non-bank financial institution upon order of any competent court **based on an *ex parte* application** in cases of violations of this Act, when it has been established that there is probable cause that the deposits or investments, including related accounts involved, are related to an unlawful activity as defined in Section 3(i) hereof or a money laundering offense under Section 4 hereof; except that no court order shall be required in cases involving activities defined in Section 3(i)(1), (2), and (12) hereof, and felonies or offenses of a nature similar to those mentioned in Section 3(i)(1), (2), and (12), which are Punishable under the penal laws of other countries, and terrorism and conspiracy to commit terrorism as defined and penalized under Republic Act No. 9372.

The Court of Appeals shall act on the application to inquire into or examine any depositor or investment with any banking institution or non-bank financial institution within twenty-four (24) hours from filing of the application.

To ensure compliance with this Act, the Bangko Sentral ng Pilipinas may, in the course of a periodic or special examination, check the compliance of a Covered institution with the requirements of the AMLA and its implementing rules and regulations.

For purposes of this section, 'related accounts' shall refer to accounts, the funds and sources of which originated from and/or are materially linked to the monetary instrument(s) or property(ies) subject of the freeze order(s).

A court order *ex parte* must first be obtained before the AMLC can inquire into these related Accounts: *Provided*, That the procedure for the *ex parte* application of the *ex parte* court order for the principal account shall be the same with that of the related accounts.

The authority to inquire into or examine the main account and the related accounts shall comply with the requirements of Article III, Sections 2 and 3 of the 1987 Constitution, which are hereby incorporated by reference. (Emphasis supplied)

The constitutionality of Section 11 of R.A. 9160, as presently worded, was upheld by the Court *En Banc* in the recently promulgated *Subido Pagente Certeza Mendoza and Binay Law Offices v. CA*.[88] The Court therein ruled that the AMLC's *ex parte* application for a bank inquiry, which is allowed under Section 11 of R.A. 9160, does not violate substantive due process. There is no such violation, because the physical seizure of the targeted corporeal property is not contemplated in any form by the law.[89] The AMLC may indeed be authorized to apply *ex parte* for an inquiry into bank accounts, but only in pursuance of its investigative functions akin to those of the National Bureau of Investigation.[90] As the AMLC does not exercise quasi-judicial functions, its inquiry by court order into bank deposits or investments cannot be said to violate any person's constitutional right to procedural due process.[91]

As regards the purported violation of the right to privacy, the Court recalled the pronouncement in *Eugenio* that the source of the right to privacy governing bank deposits is statutory, not constitutional.[92] The legislature may validly carve out exceptions to the rule on the secrecy of bank deposits, and one such legislation is Section 11 of R.A. 9160.[93]

The Court in *Subido* emphasized that the holder of a bank account that is the subject of a bank inquiry order issued *ex parte* has the opportunity to question the issuance of such an order after a freeze order has been issued against the account.[94] The account holder can then question not only the finding of probable cause for the issuance of the freeze order, but also

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[88] G.R. No. 216914, 6 December 2016.

[89] *Id*. at 11.

[90] *Id*. at 11-19.

[91] *Id*.

[92] *Id*. at 20-23.

[93] *Id*. at 23.

[94] *Id*. at 27-39.

the finding of probable cause for the issuance of the bank inquiry order.[95]

II.

The RTC's finding that there was no probable cause for the issuance of a bank inquiry order was not tainted with grave abuse of discretion.

Rule 10.2 of the Revised Rules and Regulations Implementing Republic Act No. 9160, as Amended by Republic Act No. 9194, defined probable cause as "such facts and circumstances which would lead a reasonably discreet, prudent or cautious man to believe that an unlawful activity and/or a money laundering offense is about to be, is being or has been committed and that the account or any monetary instrument or property subject thereof sought to be frozen is in any way related to said unlawful activity and/or money laundering offense." As we observed in *Subido*,[96] this definition refers to probable cause for the issuance of a freeze order against an account or any monetary instrument or property subject thereof. Nevertheless, we shall likewise be guided by the pronouncement in *Ligot v. Republic*[97] that "probable cause refers to the sufficiency of the relation between an unlawful activity and the property or monetary instrument."

In the issuance of a bank inquiry order, the power to determine the existence of probable cause is lodged in the trial court. As we ruled in *Eugenio*:

> Section 11 itself requires that it be established that "there is probable cause that the deposits or investments are related to unlawful activities," and it obviously is the court which stands as arbiter whether there is indeed such probable cause. The process of inquiring into the existence of probable cause would involve the function of determination reposed on the trial court. Determination clearly implies a function of adjudication

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[95] *Id*.

[96] *Id*. at 32.

[97] 705 Phil. 477 (2013), 501-502.

on the part of the trial court, and not a mechanical application of a standard pre-determination by some other body. The word "determination" implies deliberation and is, in normal legal contemplation, equivalent to "the decision of a court of justice."

The court receiving the application for inquiry order cannot simply take the AMLC's word that probable cause exists that the deposits or investments are related to an unlawful activity. It will have to exercise its own determinative function in order to be convinced of such fact.[98]

For the trial court to issue a bank inquiry order, it is necessary for the AMLC to be able to show specific facts and circumstances that provide a link between an unlawful activity or a money laundering offense, on the one hand, and the account or monetary instrument or property sought to be examined on the other hand. In this case, the RTC found the evidence presented by the AMLC wanting. For its part, the latter insists that the RTC's determination was tainted with grave abuse of discretion for ignoring the glaring existence of probable cause that the subject bank deposits and investments were related to an unlawful activity.

Grave abuse of discretion is present where power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personalhostility, that is so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined or to act at all in contemplation of law.[99] For certiorari to lie, it must be shown that there was a capricious, arbitrary and whimsical exercise of power – the very antithesis of the judicial prerogative.[100]

We find no reason to conclude that the RTC determined the existence of probable cause, or lack thereof, in an arbitrary and whimsical manner.

To repeat, the application for the issuance of a bank inquiry order was supported by only two pieces of evidence: Senate Committee Report No. 54 and the testimony of witness Thelma Espina.

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[98] *Republic v. Eugenio, supra* at 26.

[99] *Imutan v. CA,* 190 Phil. 233 (1981).

[100] *Id*.

We have had occasion to rule that reports of the Senate stand on the same level as other pieces of evidence submitted by the parties, and that the facts and arguments presented therein should undergo the same level of judicial scrutiny and analysis.[101] As courts have the discretion to accept or reject them,[102] no grave error can be ascribed to the RTC for rejecting and refusing to give probative value to Senate Committee Report No. 54.

At any rate, Senate Committee Report No. 54 only provided the AMLC with a description of the alleged unlawful activity, which is the fertilizer fund scam. It also named the alleged mastermind of the scam, who was respondent Bolante. The entire case of the AMLC, however, hinged on the following excerpt of Senate Committee Report No. 54:

> But Undersecretary Bolante's power over the agriculture department was widely known. And it encompasses more than what the Administrative Code provided.
>
> In fact, **at the time that he was Undersecretary, Jocelyn Bolante was** concurrently appointed by the President in other powerful positions: as Acting Chairman of the National Irrigation Administration, as **Acting Chairman of the Livelihood Corporation** x x x.[103] (Emphasis supplied)

It was this excerpt that led the AMLC to connect the fertilizer fund scam to the suspicious transaction reports earlier submitted to it by PNB.

However, the RTC found during trial that respondent Bolante had ceased to be a member of the board of trustees of LIVECOR for 14 months before the latter even made the initial transaction, which was the subject of the suspicious transaction reports. Furthermore, the RTC took note that according to the Audit Report submitted by the Commission on Audit, no part of the ₱728 million fertilizer fund was ever released to LIVECOR.

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[101] *Manotok Realty, Inc. v. CLT Realty Development Corp.,* 565 Phil. 59 (2007).

[102] *Id*.

[103] *Rollo* (G.R. No. 190357), p. 72.

We note that in the RTC Order dated 17 November 2006 in AMLC SP Case No. 06-003, the AMLC was already allowed *ex parte* to inquire into and examine the six bank deposits or investments and the related web of accounts of LIVECOR, Molugan, AGS, Samuel S. Bombeo and Ariel Panganiban. With the resources available to the AMLC, coupled with a bank inquiry order granted 15 months before *Eugenio* was even promulgated, the AMLC should have been able to obtain more evidence establishing a more substantive link tying Bolante and the fertilizer fund scam to LIVECOR. It did not help that the AMLC failed to include in its application for a bank inquiry order in AMLC SP Case No. 06-003 LIVECOR's PNB account as indicated in the suspicious transaction reports. This PNB account was included only in the application for a bank inquiry order in AMLC Case No. 07-001.

As it stands, the evidence relied upon by the AMLC in 2006 was still the same evidence it used to apply for a bank inquiry order in 2008. Regrettably, this evidence proved to be insufficient when weighed against that presented by the respondents, who were given notice and the opportunity to contest the issuance of the bank inquiry order pursuant to *Eugenio*. In fine, the RTC did not commit grave abuse of discretion in denying the application.

WHEREFORE, the petition in G.R. No. 186717 is **DENIED**. The Court of Appeals Resolution dated 27 February 2009 in CA-G.R. AMLC No. 00024 is **AFFIRMED**.

The petition in G.R. No. 190357 is **DISMISSED**. The Resolution dated 3 July 2009 and Order dated 13 November 2009 issued by the Regional Trial Court of Makati, Branch 59, in AMLC Case No. 07-001 are **AFFIRMED**.

The *Status Quo Ante* Order issued by this Court on 25 March 2009 is hereby **LIFTED**.

SO ORDERED.

Leonardo-de Castro, del Castillo, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 188269*. April 17, 2017]

SUMIFRU (PHILIPPINES) CORPORATION (surviving entity in a merger with Davao Fruits Corporation and other Companies), *petitioner, vs.* **BERNABE BAYA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; TO BE GRANTED, THE PETITIONER MUST SHOW THAT THE COURT OR QUASI-JUDICIAL AUTHORITY GRAVELY ABUSED THE DISCRETION CONFERRED UPON IT; GRAVE ABUSE OF DISCRETION, DEFINED.— "To justify the grant of the extraordinary remedy of *certiorari*, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being 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." "In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL, WHEN PRESENT; IN CONSTRUCTIVE DISMISSAL, THE EMPLOYER HAS THE BURDEN OF PROVING THAT THE TRANSFER OR DEMOTION OF AN EMPLOYEE IS A VALID EXERCISE OF MANAGEMENT PREROGATIVE.— "Constructive dismissal exists where there is cessation of work, because 'continued

* Part of the Supreme Court's Decongestion Program.

employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay' and other benefits. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment." In *Peckson v. Robinsons Supermarket Corp.*, the Court held that the burden is on the employer to prove that the transfer or demotion of an employee was a valid exercise of management prerogative and was not a mere subterfuge to get rid of an employee; failing in which, the employer will be found liable for constructive dismissal.

3. ID.; ID.; ID.; DOCTRINE OF STRAINED RELATIONS; PROVIDES THAT THE PAYMENT OF SEPARATION PAY IS CONSIDERED AN ACCEPTABLE ALTERNATIVE TO REINSTATEMENT WHEN THE LATTER OPTION IS NO LONGER DESIRABLE OR VIABLE.— [I]n light of the underlying circumstances which led to Baya's constructive dismissal, it is clear that an atmosphere of animosity and antagonism now exists between Baya on the one hand, and AMSFC and DFC on the other, which therefore calls for the application of the doctrine of strained relations. "Under the *doctrine of strained relations*, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust." Thus, it is more prudent that Baya be awarded separation pay, instead of being reinstated, as computed by the CA.

4. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; PRIVATE CORPORATIONS; MERGER; IN MERGER, ONE OF THE CORPORATIONS SURVIVES AND CONTINUES THE BUSINESS, WHILE THE OTHER IS DISSOLVED AND ALL ITS RIGHTS, PROPERTIES AND LIABILITIES ARE ACQUIRED BY THE SURVIVING CORPORATION.— Section 80 of the

Corporation Code of the Philippines clearly states that one of the effects of a merger is that the surviving company shall inherit not only the assets, but also the liabilities of the corporation it merged with x x x. Sumifru, as the surviving entity in its merger with DFC, must be held answerable for the latter's liabilities, including its solidary liability with AMSFC arising herein. Verily, jurisprudence states that "in the merger of two existing corporations, one of the corporations survives and continues the business, while the other is dissolved and all its rights, properties and liabilities are acquired by the surviving corporation," as in this case.

APPEARANCES OF COUNSEL

Charmian K. Gloria for petitioner.
Koronado B. Apuzen for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated May 14, 2008 and the Resolution[3] dated May 20, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 85950, which set aside the Resolutions dated March 10, 2004[4] and May 31, 2004[5] of the National Labor Relations Commission (NLRC) in NLRC CA NO. M-007670-2003 and, accordingly,

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[1] *Rollo*, pp. 10-29.

[2] *Id*. at 32-45. Penned by Associate Justice Edgardo T. Lloren with Associate Justices Edgardo A. Camello and Jane Aurora C. Lantion concurring.

[3] *Id*. at 46.

[4] *Id*. at 133-136. Penned by Presiding Commissioner Salic B. Dumarpa with Commissioners Proculo T. Sarmen and Jovito C. Cagaanan concurring.

[5] *Id*. at 138. Penned by Presiding Commissioner Salic B. Dumarpa with Commissioner Proculo T. Sarmen concurring and Commissioner Jovito C. Cagaanan dissenting.

reinstated the Decision[6] dated June 30, 2003 of the Labor Arbiter (LA) in NLRC Case No. RAB-11-09-1062-02 declaring respondent Bernabe Baya (Baya) to have been illegally/constructively dismissed by AMS Farming Corporation (AMSFC) and Davao Fruits Corporation (DFC), with modification deleting the award of backwages, annual vacation leave pay, sick leave pay, monthly housing subsidy, electric light subsidy, and exemplary damages, and ordering AMSFC and DFC to pay Baya the amounts of ₱194,992.82 as separation pay, ₱8,279.95 as 13th month pay, ₱50,000.00 as moral damages, and ₱25,327.28 as attorney's fees.

The Facts

The instant case stemmed from a complaint[7] for, *inter alia*, illegal/constructive dismissal filed by Baya against AMSFC and DFC before the NLRC.[8] Baya alleged that he had been employed by AMSFC since February 5, 1985, and from then on, worked his way to a supervisory rank on September 1, 1997. As a supervisor, Baya joined the union of supervisors, and eventually, formed AMS Kapalong Agrarian Reform Beneficiaries Multipurpose Cooperative (AMSKARBEMCO), the basic agrarian reform organization of the regular employees of AMSFC. In June 1999, Baya was reassigned to a series of supervisory positions in AMSFC's sister company, DFC, where he also became a member of the latter's supervisory union while at the same time, remaining active at AMSKARBEMCO. Later on and upon AMSKARBEMCO's petition before the Department of Agrarian Reform (DAR), some 220 hectares of AMSFC's 513-hectare banana plantation were covered by the Comprehensive Agrarian Reform Law. Eventually, said portion was transferred to AMSFC's regular employees as Agrarian Reform Beneficiaries (ARBs), including Baya. Thereafter, the ARBs explored a possible agribusiness venture agreement with

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[6] *Id*. at 108-132 (pages are inadvertently misarranged). Penned by LA Amado M. Solamo.

[7] Dated September 20, 2002. *Id*. at 95-96.

[8] See *id*. at 120.

AMSFC, but the talks broke down, prompting the Provincial Agrarian Reform Officer to terminate negotiations and, consequently, give AMSKARBEMCO freedom to enter into similar agreement with other parties. In October 2001, the ARBs held a referendum in order to choose as to which group between AMSKARBEMCO or SAFFPAI, an association of pro-company beneficiaries, they wanted to belong. 280 went to AMSKARBEMCO while 85 joined SAFFPAI.[9]

When AMSFC learned that AMSKARBEMCO entered into an export agreement with another company, it summoned AMSKARBEMCO officers, including Baya, to lash out at them and even threatened them that the ARBs' takeover of the lands would not push through. Thereafter, Baya was again summoned, this time by a DFC manager, who told the former that he would be putting himself in a "difficult situation" if he will not shift his loyalty to SAFFPAI; this notwithstanding, Baya politely refused to betray his cooperative. A few days later, Baya received a letter stating that his secondment with DFC has ended, thus, ordering his return to AMSFC. However, upon Baya's return to AMSFC on **August 30, 2002**, he was informed that there were no supervisory positions available; thus, he was assigned to different rank-and-file positions instead. On **September 20, 2002**, Baya's written request to be restored to a supervisory position was denied, prompting him to file the instant complaint. On even date, the DAR went to the farms of AMSFC to effect the ARBs' takeover of their awarded lands.[10] The following day, all the members of AMSKARBEMCO were no longer allowed to work for AMSFC "as they have been replaced by newly-hired contract workers"; on the other hand, the SAFFPAI members were still allowed to do so.[11]

In their defense, AMSFC and DFC maintained that they did not illegally/constructively dismiss Baya, considering that his termination from employment was the direct result of the ARBs' takeover of AMSFC's banana plantation through the government's

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[9] See *id*. at 33-34 and 120-124.

[10] See *id*. at 34-35 and 124-128.

[11] *Id*. at 128.

agrarian reform program. They even shifted the blame to Baya himself, arguing that he was the one who formed AMSKARBEMCO and, eventually, caused the ARBs' aforesaid takeover.[12]

The LA Ruling

In a Decision[13] dated June 30, 2003, the LA ruled in Baya's favor and, accordingly, ordered AMSFC and DFC to: (*a*) reinstate Baya to his former position as supervisor without loss of seniority rights, or should reinstatement be impossible, to pay him separation pay at the rate of 39.25 days of salary for every year of service as practiced by the company; and (*b*) pay Baya backwages and other benefits, as well as moral damages, exemplary damages, and attorney's fees.[14]

The LA found that since it was undisputed that Baya held supervisory positions in AMSFC and DFC, his demotion to various rank-and-file positions without any justifiable reason upon his return to AMSFC constituted constructive dismissal. In this regard, the LA opined that the alleged lack of supervisory positions in AMSFC was not a valid justification for Baya's demotion to rank-and-file, as AMSFC and DFC should not have caused Baya's return to AMSFC if there was indeed no available supervisory position. Further, the LA did not lend credence to AMSFC and DFC's contention that Baya's termination was on account of the ARBs' takeover of the banana plantations, considering that: (*a*) the acts constituting constructive dismissal occurred when Baya returned to AMSFC on **August 30, 2002**, while the takeover was done only on **September 20, 2002**; and (*b*) only members of AMSKARBEMCO were no longer allowed to work after the takeover, while members of SAFFPAI, the pro-company cooperative, were retained.[15]

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[12] See *id*. at 129-131.

[13] *Id*. at 108-132 (pages are inadvertently misarranged).

[14] See *id*. at 117-119.

[15] See *id*. at 131-132 and 108-117.

Aggrieved, respondents appealed[16] to the NLRC.

The NLRC Ruling

In a Resolution[17] dated March 10, 2004, the NLRC reversed and set aside the LA ruling except for the payment of 13th month pay which was affirmed with modification, and entered a new one dismissing the case for lack of merit.[18] Contrary to the LA's findings, the NLRC found that the termination of Baya's employment was not caused by illegal/constructive dismissal, but by the cessation of AMSFC's business operation or undertaking in large portions of its banana plantation due to the implementation of the agrarian reform program. Thus, the NLRC opined that Baya is not entitled to separation pay as such cessation was not voluntary, but rather involuntary, on the part of AMSFC as it was an act of the State, *i.e.*, the agrarian reform program, that caused the same.[19]

Baya moved for reconsideration,[20] which was, however, denied in a Resolution[21] dated May 31, 2004. Dissatisfied, he filed a petition for *certiorari*[22] before the Court of Appeals (CA).

The CA Ruling

In a Decision[23] dated May 14, 2008, the CA set aside the NLRC ruling and reinstated that of the LA with modification deleting the award of backwages, annual vacation leave pay, sick leave pay, monthly housing subsidy, electric light subsidy, and exemplary damages, and ordering AMSFC and DFC to solidarily pay Baya the aggregate amount of ₱278,600.05,

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[16] See Appeal Memorandum dated July 24, 2003; *id*. at 97-104.

[17] *Id*. at 133-136.

[18] *Id*. at 136.

[19] See *id*. at 134-136.

[20] Not attached to the *rollo*.

[21] *Rollo*, p. 138.

[22] Dated August 11, 2004. *Id*. at 47-79.

[23] *Id*. at 32-45.

consisting of ₱194,992.82 as separation pay, ₱8,279.95 as 13th month pay, ₱50,000.00 as moral damages, and ₱25,327.28 as attorney's fees.[24]

It held that the NLRC gravely abused its discretion in dismissing Baya's complaint as the undisputed facts clearly establish constructive dismissal, based on the following considerations: (*a*) in spite of knowing that there was no available supervisory position in AMSFC, the top management still proceeded to order Baya's return there to force him to accept rank-and file positions; (*b*) such "return to AMSFC" was done after Baya was harassed by company managers into switching loyalties to the pro-company cooperative, which was refused by Baya; (*c*) such acts of the top management of AMSFC and DFC were in furtherance of their cooperative busting tactics as stated in the Joint Affidavits executed by AMSKARBEMCO members, which were not refuted by AMSFC and DFC; and (*d*) such acts constituting constructive dismissal were done even before the ARBs were allowed to take over the lands awarded to them. Despite the fact of constructive dismissal, the CA opted not to award backwages to Baya, as he was already awarded a portion of AMSFC's banana plantation through the agrarian reform program. Thus, in the interest of justice and fair play, the CA only awarded him separation pay and 13th month pay, plus moral damages and attorney's fees.[25]

Petitioner filed a motion for reconsideration,[26] which was, however, denied in a Resolution[27] dated May 20, 2009.

Meanwhile and during the pendency of the CA proceedings, petitioner Sumifru (Philippines) Corporation (Sumifru) acquired DFC *via* merger[28] sometime in 2008. According to Sumifru, it

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

[25] See *id*. at 40-44.

[26] Dated June 12, 2008. *Id*. at 82-90.

[27] *Id*. at 46.

[28] See Certificate of Filing of the Articles and Plan of Merger dated June 30, 2008; *id*. at 91.

only learned of the pendency of the CA proceedings on June 15, 2009, or after the issuance of the CA's Resolution dated May 20, 2009.[29] Thus, Sumifru was the one who filed the instant petition on behalf of DFC.[30]

The Issue Before the Court

The issues for the Court's resolution are whether or not: (*a*) the CA correctly ruled that the NLRC gravely abused its discretion, and consequently, held that AMSFC and DFC constructively dismissed Baya; (*b*) whether or not AMSFC and DFC are liable to Baya for separation pay, moral damages, and attorney's fees; and (*c*) whether or not Sumifru should be held solidarily liable with AMSFC's for Baya's monetary awards.

The Court's Ruling

The petition is without merit.

"To justify the grant of the extraordinary remedy of *certiorari*, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being 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."[31]

"In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[32]

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[29] See Motion for Extension to File Petition dated June 16, 2009; *id.* at 3-5.

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

[31] See *Sta. Isabel v. Perla Compañia De Seguros, Inc.*, G.R. No. 219430, November 7, 2016, citing *Cebu People's Multipurpose Cooperative v. Carbonilla, Jr.*, G.R. No. 212070, January 27, 2016.

[32] See *id*.

Guided by the foregoing considerations, the Court finds that the CA correctly ascribed grave abuse of discretion on the part of the NLRC in reversing the LA ruling, as the LA's finding that Baya was constructively dismissed from employment is supported by substantial evidence.

"Constructive dismissal exists where there is cessation of work, because 'continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay' and other benefits. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment."[33] In *Peckson v. Robinsons Supermarket Corp.*,[34] the Court held that the burden is on the employer to prove that the transfer or demotion of an employee was a valid exercise of management prerogative and was not a mere subterfuge to get rid of an employee; failing in which, the employer will be found liable for constructive dismissal, *viz.*:

> In case of a constructive dismissal, the employer has the burden of proving that the transfer and demotion of an employee are for valid and legitimate grounds such as genuine business necessity. Particularly, for a transfer not to be considered a constructive dismissal, the employer must be able to show that such transfer is not unreasonable, inconvenient, or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Failure of the employer to overcome this burden of proof, the employee's demotion shall no doubt be tantamount to unlawful constructive dismissal.[35]

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[33] *Verdadero v. Barney Autolines Group of Companies Transport, Inc.*, 693 Phil. 646, 656 (2012), citing *Morales v. Harbour Centre Port Terminal, Inc.*, 680 Phil. 112, 120-121 (2012).

[34] 713 Phil. 471 (2013).

[35] *Id*. at 484, citing *Jarcia Machine Shop and Auto Supply, Inc. v. NLRC*, 334 Phil. 84, 95 (1997).

In this case, a judicious review of the records reveals that the top management of both AMSFC and DFC, which were sister companies at the time, were well-aware of the lack of supervisory positions in AMSFC. This notwithstanding, they still proceeded to order Baya's return therein, thus, forcing him to accept rank-and-file positions. Notably, AMSFC and DFC failed to refute the allegation that Baya's "end of secondment with DFC" only occurred after: (*a*) he and the rest of AMSKARBEMCO officials and members were subjected to harassment and cooperative busting tactics employed by AMSFC and DFC; and (*b*) he refused to switch loyalties from AMSKARBEMCO to SAFFPAI, the pro-company cooperative. In this relation, the Court cannot lend credence to the contention that Baya's termination was due to the ARBs' takeover of the banana plantation, because the said takeover only occurred on **September 20, 2002**, while the acts constitutive of constructive dismissal were performed as early as **August 30, 2002**, when Baya returned to AMSFC. Thus, AMSFC and DFC are guilty of constructively dismissing Baya.

However, in light of the underlying circumstances which led to Baya's constructive dismissal, it is clear that an atmosphere of animosity and antagonism now exists between Baya on the one hand, and AMSFC and DFC on the other, which therefore calls for the application of the doctrine of strained relations. "Under the *doctrine of strained relations*, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust."[36] Thus, it is more prudent that Baya be awarded separation pay, instead of being reinstated, as computed by the CA.

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[36] *Dreamland Hotel Resort v. Johnson*, 729 Phil. 384, 400-401 (2014), citing *Golden Ace Builders v. Talde*, 634 Phil. 364, 370 (2010).

Further, and as aptly pointed out by both the LA and the CA, the acts constitutive of Baya's constructive dismissal are clearly tainted with bad faith as they were done to punish him for the actions of his cooperative, AMSKARBEMCO, and for not switching his loyalty to the pro-company cooperative, SAFFPAI. This prompted Baya to litigate in order to protect his interest and to recover what is properly due him. Hence, the award of moral damages and attorney's fees are warranted.

Finally, Sumifru's contention that it should only be held liable for the period when Baya stayed with DFC as it only merged with the latter and not with AMSFC[37] is untenable. Section 80 of the Corporation Code of the Philippines clearly states that one of the effects of a merger is that the surviving company shall inherit not only the assets, but also the liabilities of the corporation it merged with, to wit:

> Section 80. *Effects of merger or consolidation*. – The merger or consolidation shall have the following effects:
>
> 1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merger; and, in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation;
>
> 2. The separate existence of the constituent corporations shall cease, except that of the surviving or the consolidated corporation;
>
> 3. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code;
>
> 4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each

[37] See *rollo*, pp. 24-26.

constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed; and

5. The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any pending claim, action or proceeding brought by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation. The rights of creditors or liens upon the property of any of such constituent corporations shall not be impaired by such merger or consolidation.

In this case, it is worthy to stress that both AMSFC and DFC are guilty of acts constitutive of constructive dismissal performed against Baya. As such, they should be deemed as solidarily liable for the monetary awards in favor of Baya. Meanwhile, Sumifru, as the surviving entity in its merger with DFC, must be held answerable for the latter's liabilities, including its solidary liability with AMSFC arising herein. Verily, jurisprudence states that "in the merger of two existing corporations, one of the corporations survives and continues the business, while the other is dissolved and all its rights, properties and liabilities are acquired by the surviving corporation,"[38] as in this case.

WHEREFORE, the petition is **DENIED**. The Decision dated May 14, 2008 and the Resolution dated May 20, 2009 of the Court of Appeals in CA-G.R. SP No. 85950 are hereby **AFFIRMED**. Accordingly, Sumifru (Philippines) Corporation, as the surviving entity in its merger with Davao Fruits Corporation, shall be held answerable for the latter's obligations as indicated in this Decision.

SO ORDERED.

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

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[38] *Babst v. CA,* 403 Phil. 244, 258 (2001).

THIRD DIVISION

[G.R. No. 191353. April 17, 2017]

ULTRA MAR AQUA RESOURCE, INC., represented by its President VICTOR B. PRIETO, *petitioner, vs.* **FERMIDA CONSTRUCTION SERVICES, represented by its General Manager MYRNA T. RAMOS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; EFFECTS OF FAILURE TO APPEAR AT PRE-TRIAL; INSTANCES WHEN NON-APPEARANCE OF A PARTY AND COUNSEL MAY BE EXCUSED.— [T]he failure of a party to appear at pre-trial has adverse consequences: if the absent party is the plaintiff then he may be declared non-suited and his case is dismissed; if the absent party is the defendant, then the plaintiff may be allowed to present his evidence *ex parte* and the court to render judgment on the basis thereof. By way of exception, the non-appearance of a party and counsel may be excused if (1) a valid cause is shown; or (2) there is an appearance of a representative on behalf of a party fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents. What constitutes a valid cause is subject to the court's sound discretion and the exercise of such discretion shall not be disturbed except in cases of clear and manifest abuse.

2. ID.; ID.; ID.; ID.; WHERE THE JUSTIFICATIONS ADVANCED BY PETITIONER'S COUNSEL FOR ITS FAILURE TO APPEAR AT THE PRE-TRIAL WAS NOT A VALID CAUSE, PETITIONER AND ITS COUNSEL CANNOT EVADE THE EFFECTS OF THEIR MISFEASANCE; NEGLIGENCE OF THE COUNSEL BINDS THE CLIENT.— Ultra Mar's counsel repeatedly moved for the postponement of the pre-trial conference, and yet still failed to appear. Litigants and counsels are reminded

time and again that a motion for postponement is a privilege and not a right. The grant or denial of a motion for postponement is a matter that is addressed to the sound discretion of the trial court. As the Court consistently affirms, an order declaring a party to have waived the right to present evidence for performing dilatory actions upholds the trial court's duty to ensure that trial proceeds despite the deliberate delay and refusal to proceed on the part of one party. Clearly then, the justifications advanced by Ultra Mar's counsel for its repeated failure to comply with the RTC's Order to appear at the Pre-Trial Conference, to submit the Pre-Trial Brief and to present the supporting Medical Certificate do not constitute a valid cause to excuse such non-compliance. Ultra Mar would nevertheless point an accusing finger at its counsel for the latter's gross negligence. However, nothing is more settled than the rule that the negligence and mistakes of a counsel are binding on the client. x x x Consequently, neither Ultra Mar nor its counsel can evade the effects of their misfeasance.

APPEARANCES OF COUNSEL

Marc Raymund S. Cesa for petitioner.
Alreuela Bundang Ortiz for respondent.

D E C I S I O N

TIJAM, *J.*:

Assailed in this Petition for Review[1] under Rule 45 is the Decision[2] dated July 28, 2009 and Resolution[3] dated February 9, 2010 of the Court of Appeals[4] (CA) in CA G.R. CV No. 86540 which affirmed with modification the Regional Trial Court's (RTC) Decision[5] dated October 7, 2004 and ordered

[1] *Rollo*, pp. 9-31.
[2] *Id*. at pp. 32-46.
[3] *Id*. at pp. 45-46.
[4] Penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Rebecca De Guia-Salvador and Estela M. Perlas-Bernabe.
[5] *Rollo*, pp. 87-95.

Petitioner Ultra Mar Aqua Resource, Inc., (Ultra Mar) to pay Respondent Fermida Construction Services (Fermida) the construction costs of a warehouse pursuant to the parties' agreement.

The Facts of the Case

On December 8, 2003, Fermida entered into a Contract Agreement[6] with Ultra Mar for the construction of a warehouse in Wawandue, Subic, Zambales (Project) with a contract price of PhP1,734,740. In the course of construction, variations as to roof coverage, drainage canal, painting and electrical work were made by Fermida upon Ultra Mar's request and instructions.[7]

After completing the Project on January 17, 2004, Fermida sent to Ultra Mar a Billing Statement exclusive of the cost of variation orders and extra work orders made. Pursuant to the parties' agreement, Fermida secured a Surety Bond to satisfy the 10 percent retention to cover any defect in materials and workmanship. A Contractor's Affidavit stating that all claims and obligations for labor services, materials supplied, equipment and tools have been fully settled was likewise executed.[8]

However, Fermida received a letter from Ultra Mar expressing discontentment on some of the former's work. Resultantly, Fermida undertook repairs and another Billing Statement was thereafter sent to Ultra Mar.[9]

Just the same, Ultra Mar refused to pay because of Fermida's alleged failure to submit the FDT Report and Building Permits, and substandard work and delay in the completion of the Project.

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[6] *Id*. at pp. 54-55.

[7] *Id*. at p. 33.

[8] *Id*.

[9] *Id*. at p. 34.

Because of Ultra Mar's failure to comply with its obligations, Fermida demanded payment not only of the contract price but for the cost of the variation orders as well. In response, Ultra Mar stated that it did not ask for variations on the Project but only rectifications as the work done by Fermida was below standard.[10]

Consequently, Fermida commenced the Complaint for Collection of Sum of Money with Prayer for Injunction[11] before the RTC.

The RTC ordered[12] an ocular inspection of the subject premises and an ocular inspection by an independent engineer was conducted. The case was then set for pre-trial conference.

However, the scheduled pre-trial conference on August 9, 2004 was postponed upon motion of Ultra Mar's counsel and was then re-scheduled to August 17, 2004. This was again reset to September 7, 2004. Despite several resettings, counsel for Ultra Mar failed to attend the pre-trial conference and failed to file the required pre-trial brief. As a result, the RTC declared Ultra Mar in default and allowed Fermida to present its evidence *ex parte*.[13]

On September 8, 2004, Ultra Mar, through counsel, filed an Omnibus Motion to Lift Order of Default, Admit Attached Pre-Trial Brief and Set the Case for Pre-Trial Conference[14] (Omnibus Motion) alleging that his failure to file the Pre-Trial Brief was due to the intermittent nausea he was experiencing as a result of a sudden drop in his blood sugar level. Affording leniency, the RTC required a supporting Medical Certificate upon submission of which Ultra Mar's Omnibus Motion shall be resolved.

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[10] *Id*. at p. 35.

[11] *Id*. at pp. 47-53.

[12] *Id*. at p. 80.

[13] *Id*. at p. 82.

[14] No copy attached to the Petition.

Ultra Mar's counsel failed to comply with the said Order thus the RTC denied Ultra Mar's Omnibus Motion and, on October 7, 2004, issued a Decision[15], the *fallo* portion of which states:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of [Fermida] and against [Ultra Mar] as follows: ordering the [Ultra Mar] to pay [Fermida] the amount of ₱1,106[,]000.38; with interest thereon at the legal rate from the date of the filing of this complaint. The amount of ₱50,000.00 as attorney's fees and ₱10,000.00 as litigation expenses; ₱100,000.00 as nominal damages and to pay the costs of suit.

SO ORDERED."[16]

Ultra Mar moved for reconsideration and attached thereto its counsel's Medical Certificates.[17] The RTC denied the same for being a second motion for reconsideration.[18] Similarly, the RTC denied Ultra Mar's motion for reconsideration of its main Decision dated October 7, 2004.

Ultra Mar then elevated the case to the CA. The CA, however, found no error on the part of the RTC when it denied Ultra Mar's Omnibus Motion. The CA noted that Ultra Mar's counsel failed to provide a plausible justification why he failed to submit the required pre-trial brief.

On the merits, the CA found that Fermida was able to preponderantly establish that it entered into a construction agreement with Ultra Mar and that despite demands, the latter failed to pay. To resolve which between Fermida on one hand, claiming that the Project has been completed, and Ultra Mar

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[15] *Rollo*, pp. 45-46.

[16] *Id*.

[17] *Id*. at pp. 83-84.

[18] Section 2, Rule 52 of the Rules of Court provides:

SEC. 2. Second motion for reconsideration. – No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

on the other, claiming that the Project was not yet complete and the work done was defective, the CA made reference to the Report and Supplemental Report of the court-appointed independent engineer who made the following findings:

"8. Since there were variations made construction does not conform with the approved plan and specifications. It appears there were items of works completed which are not included from the scope of work indicated in the contract documents.

9. No variation order approved and issued by the owner to contractor regarding the additional works performed by the contractor, but no written notice from ULTRA MAR AQUA RESOURCES INC., that they opposed the alteration or variation during the construction. It is apparent that PERMIDA [sic] CONSTRUCTION had received a verbal instruction regarding the supposed additional works.

CONCLUSIONS AND RECOMMENDATIONS

(a) Under GC-12 Completion and Acceptance of General Conditions of Contract which states that: 'Upon completion of the Work, written notice thereof shall be served by the Contractor to the Owner. Upon receipt of the said notice, the Owner shall inspect the Work to determine if it has been satisfactorily performed and completed in accordance with the Contract. xxx'

Based on the result of my ocular inspection, the contractor have [sic] to repair all defected [sic] works, and this project cannot be considered substantially completed and final billing should be withheld pending completion of repair and uncompleted item.

x x x x x x x x x"[19]

Supplementing the foregoing, the independent engineer stated:

"Considering that there are minor repair works noted in my July 1, 2004 report, I have recommended that the contractor have [sic] to repair all defected [sic] works and the final billing should be withheld pending completion of repair of defected [sic] works. I wish to be corrected that I just based that withholding of final billing on the usual way of collection being done by most private contractor that is 30% down payment followed by progress billing and a 10% final retention. Ultra Mar should withheld

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[19] *Id*. at pp. 41-42.

the payment of Fermida Construction for the 10% retention and not based on the final billing which includes the whole of contract amount and the supposed variation works. However, in this case, a surety bond was already posted by Fermida Construction, hence, the bond should be liable in this case to Ultra Mar if in case the contractor refuses to repair any of alleged defected [sic] works."[20]

As such, the CA held that the construction works are not without defects. Be that as it may, the CA noted that such defective work is covered by the 10 percent retention that Ultra Mar is allowed to withhold from Fermida. Hence, the CA ruled that Ultra Mar is indeed liable to pay Fermida the construction cost of ₱1,106,038.82 but subject to the 10 percent retention. Finally, the CA deleted the awards of nominal damages, attorney's fees and litigation expenses for being unsubstantiated.

The CA, in its *fallo* portion, disposed as such:

"WHEREFORE, the Appeal is PARTIALLY GRANTED. The Decision dated 7 October 2004 of the Regional Trial Court, Third Judicial Region, Olongapo City, Branch 72, in Civil Case No. 199-0-2004 is MODIFIED as follows:

1. Appellant Ultra Mar Aqua Resources, Inc. is directed to pay appellee Fermida Construction Services the amount of ₱1,106,038.82 with legal interest thereon from the date of the filing of the Complaint subject to the 10% retention.

2. The awards of nominal damages, attorney[']s fees and litigation expenses are DELETED.

SO ORDERED."[21]

Ultra Mar partially moved for reconsideration essentially arguing that it was denied the right to present evidence due to the gross negligence of its former counsel.[22] The CA denied Ultra Mar's partial motion for reconsideration.[23]

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[20] *Ibid*.

[21] *Supra* Note 2 at p. 43.

[22] *Id*. at p. 45.

[23] *Supra* Note 3.

The Issues

Unperturbed, Ultra Mar filed the instant Petition on the following grounds[24]:

"(1) The Court of Appeals erred in holding that the Trial Court did not commit any reversible error in denying the Omnibus Motion to Lift Order of Default, Admit Attached Pre-trial Brief and Set the Case for Pre-trial Conference filed by Atty. Mas and in denying Atty. Mas' Motion for Reconsideration [of the Order dated September 17, 2004] with Compliance pursuant to Section 2, Rule 52 of the Rules of Court.

(2) The Court of Appeals erred in not relieving the petitioner from the effects of gross negligence of its counsel Atty. Leonuel Mas who despite receipt of the Decision of the Trial Court on October 15, 2004 did not inform the petitioner albeit deceivingly sent the petitioner a report dated November 26, 2004 that he moved the case be set for pre-trial."[25]

The Ruling of the Court

Ultra Mar essentially argues that it should have been allowed to present its evidence because its non-appearance at the pre-trial conference and failure to file pre-trial brief were attributable to its counsel's gross negligence for which it should not be made to suffer the consequences. Ultra Mar further postulates that it has a meritorious defense which could lead the RTC to rule otherwise had it been presented.

The petition is devoid of merit.

At the heart of this case is the propriety of the RTC's Order declaring Ultra Mar in default, allowing Fermida to present its evidence *ex parte* and thereafter, rendering judgment on the basis thereof.

Prefatorily, it bears to emphasize that as the Rules of Civil Procedure presently stand, if the defendant fails to appear for

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[24] *Id*. at p. 19.

[25] *Ibid*.

pre-trial, a default order is no longer issued. Initially, the phrase "as in default" was included in Rule 20 of the old rules.[26] With the amended provision, the phrase "as in default" was deleted, the purpose of which is "one of semantical propriety or terminological accuracy as there were criticisms on the use of the word default in the former provision since that term is identified with the failure to file a required answer, not appearance in court."[27] While the order of default no longer obtains, its effects were nevertheless retained.

Thus, Section 4, Rule 18 requires the parties and their counsel to appear at the pre-trial conference. The effect of their failure to appear is spelled under Section 5 of the same rule, as follows:

Section 4. Appearance of parties. – It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.

Section 5. Effect of failure to appear. – The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

Further, Section 6 of the same rule provides:

Section 6. Pre-trial brief. – The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their

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[26] Sec. 2. A party who fails to appear at a pre-trial conference may be non-suited or considered as in default.

[27] Regalado, *Remedial Law Compendium*, Vol. I, Ninth Revised Edition, p. 309.

receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

x x x x x x x x x

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.

Hence, the failure of a party to appear at pre-trial has adverse consequences: if the absent party is the plaintiff then he may be declared non-suited and his case is dismissed; if the absent party is the defendant, then the plaintiff may be allowed to present his evidence *ex parte* and the court to render judgment on the basis thereof.[28]

By way of exception, the non-appearance of a party and counsel may be excused if (1) a valid cause is shown; or (2) there is an appearance of a representative on behalf of a party fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents. What constitutes a valid cause is subject to the court's sound discretion and the exercise of such discretion shall not be disturbed except in cases of clear and manifest abuse.[29]

Elucidating on the circumstances surrounding the denial of Ultra Mar's Omnibus Motion, the CA had this to say:

"xxx xxx xxx

Here, We note that in the *Preliminary Pre-Trial Order* dated 8 June 2004, the court *a quo* had already directed the parties to submit their respective *Pre-Trial Briefs* at least three days before the Pre-Trial Conference, *i.e.,* on or before 9 August 2004. However, on said date, appellant's counsel filed an *Urgent Ex-Parte Motion for Postponement* on the ground that he had an urgent matter to attend to. The records revealed that the Pre-Trial Conference was rescheduled and eventually pushed through on 7 September 2004. Once again,

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[28] *Daaco v. Yu*, G.R. No. 183398, June 22, 2015.

[29] *Ibid*.

however, appellant's counsel failed to appear and file the required *Pre-Trial Brief*.

In his attempt to set aside the *Order* allowing the presentation of evidence *ex-parte*, appellant's counsel filed the *Omnibus Motion* advancing his ill-health as reason for his failure to comply with the court *a quo's Order*. x x x

From the foregoing factual milieu, We find no convincing ground to apply the policy of liberality. Appellant's counsel advanced no plausible justification why he failed to submit the *Pre-Trial Brief* the court *a quo* had directed him in its *Preliminary Pre-Trial Order*. Lenient as it was, the court *a quo* still gave appellant's counsel a chance albeit with the condition that he submit a *Medical Certificate*. Unfortunately, he failed to comply. That the subject *Medical Certificate* is dated 6 September 2004 did not escape Our attention. Verily, We find it perplexing why it was never attached to the Omnibus Motion dated 8 September 2004 or it was ever mentioned therein. As a practicing lawyer, appellant's counsel is aware that any claim of illness must be substantiated by a *Medical Certificate*. Likewise, We note that appellant's counsel was given five days from 9 September 2004 within which to submit the *Medical Certificate* in question. Interestingly, counsel was mum about the impossibility of his compliance because he left his records in Sta. Cruz, Zambales during the time he was ill. It was only on 13 October 2004 or 34 days after 9 September 2004 that he informed the court *a quo* the reason for his non-compliance. Under such factualness the court *a quo* unerringly denied the *Omnibus Motion* and subsequent *Motion for Reconsideration with Compliance* treating the latter as a *Second Motion for Reconsideration* prohibited under the Rules.

xxx xxx xxx"[30]

Pointedly, Ultra Mar's counsel repeatedly moved for the postponement of the pre-trial conference, and yet still failed to appear. Litigants and counsels are reminded time and again that a motion for postponement is a privilege and not a right. The grant or denial of a motion for postponement is a matter that is addressed to the sound discretion of the trial court. As the Court consistently

[30] *Id*. at pp. 39-40.

affirms, an order declaring a party to have waived the right to present evidence for performing dilatory actions upholds the trial court's duty to ensure that trial proceeds despite the deliberate delay and refusal to proceed on the part of one party.[31]

Clearly then, the justifications advanced by Ultra Mar's counsel for its repeated failure to comply with the RTC's Order to appear at the Pre-Trial Conference, to submit the Pre-Trial Brief and to present the supporting Medical Certificate do not constitute a valid cause to excuse such non-compliance.

Ultra Mar would nevertheless point an accusing finger at its counsel for the latter's gross negligence. However, nothing is more settled than the rule that the negligence and mistakes of a counsel are binding on the client.

The rationale for this rule is reiterated in the case of *Lagua v. Court of Appeals*[32]:

"The general rule is that a client is bound by the counsel['s] acts, including even mistakes in the realm of procedural technique. The rationale for the rule is that a counsel, once retained, holds the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his client, such that any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself."

Ultra Mar, on the other hand, has the following concomitant obligation:

"As clients, petitioners should have maintained contact with their counsel from time to time, and informed themselves of the progress of their case, thereby exercising that standard of care which an ordinarily prudent man bestows upon his business.

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[31] *The Philippine American Life & General Insurance Company v. Enario*, G.R. No. 182075, September 15, 2010.

[32] G.R. No. 173390, June 27, 2012 citing *Bejarasco v. People*, G.R. No. 159781, February 2, 2011, 641 SCRA 328, 330-331.

Even in the absence of the petitioner['s] negligence, the rule in this jurisdiction is that a party is bound by the mistakes of his counsel. In the earlier case of *Tesoro v. Court of Appeals*, we emphasized:

> It has been repeatedly enunciated that a client is bound by the action of his counsel in the conduct of a case and cannot be heard to complain that the result might have been different had he proceeded differently. A client is bound by the mistakes of his lawyer. If such grounds were to be admitted as reasons for reopening cases, there would never be an end to a suit so long as new counsel could be employed who could allege and show that prior counsel had not been sufficiently diligent or experienced or learned (citation omitted).[33]"

Consequently, neither Ultra Mar nor its counsel can evade the effects of their misfeasance.[34]

To convince the Court that its counsel was indeed grossly negligent, Ultra Mar cites said counsel's disbarment and the case filed against him for malversation pending before the Provincial Prosecutor of Cavite.[35] These instances, however, cannot support a pronouncement as to counsel's gross negligence. For one, these events have no direct bearing to the instant case. In fact, these events transpired after the commission of the supposed negligent act complained of. For another, Ultra Mar claimed gross negligence on the part of its counsel for the first time on appeal, that is, when they filed their motion for reconsideration with the CA. The rule is that issues not raised in the proceedings below cannot be raised for the first time on appeal. This must be so considering that Ultra Mar seeks opportunity to present its evidence when fairness and due process dictate that evidence and issues not

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[33] *Tan v. Court of Appeals*, 524 Phil. 752, 760-761 (2006).

[34] *Suico Industrial Corp. v. Lagura-Yap,* G.R. No. 177711, September 5, 2012, 680 SCRA 145, 159.

[35] *Rollo*, p. 21.

presented below cannot be taken up for the first time on appeal.[36]

With respect to the CA's order for Ultra Mar to pay Fermida PhP 1,106,038.82 representing the amount of its outstanding contractual obligation, We affirm its findings which were based on the evidence presented by Fermida.[37] We reiterate that as a consequence of Ultra Mar's non-appearance at the pre-trial conference, it was deemed to have waived its right to present its own evidence.

However, pursuant to the parties' Contract Agreement[38] as well as on the observations of the court-appointed independent engineer[39], the 10 percent retention has been sufficiently covered by the Surety Bond secured by Fermida, hence Ultra Mar is no longer entitled to withhold the same.

WHEREFORE, premises considered, the Court resolves to **DENY** the petition. The Decision dated July 28, 2009 and Resolution dated February 9, 2010 of the Court of Appeals in CA G.R. CV No. 86540 are **AFFIRMED** with **MODIFICATION** that the payment of PhP1,106,038.82 is no longer made subject to the 10 percent retention in favor of Ultra Mar Aqua Resource Inc.

Velasco, Jr. (Chairperson), *Bersamin, Reyes,* and *Jardeleza, JJ.,* concur.

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[36] *Del Rosario v. Bonga*, G.R. No. 136308, January 23, 2001.

[37] *Rollo*, p. 43.

[38] "2 (d) The ten percent (10%) retained amount shall be paid by the Owner to the Contractor, without interest, after written acceptance of the work by the Owner, subject to the formal request of the Contractor and upon posting of Surety Bond equivalent to ten percent (10%) in favor of the Owner."

[39] *Supra* Note 20.

THIRD DIVISION

[G.R. No. 207667. April 17, 2017]

SPOUSES PROCESO O. PONTILLAS, JR. and HELEN S. PONTILLAS, *petitioners, vs.* **CARMEN OLIVARES *vda. de* PONTILLAS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW UNDER RULE 42; BELATED SUBMISSION OF PROOF OF SERVICE TO THE ADVERSE PARTY AND THE UPDATED PTR NUMBER OF PETITIONER'S COUNSEL CONSTITUTES SUBSTANTIAL COMPLIANCE.— Courts should not be unduly strict in cases involving procedural lapses that do not really impair the proper administration of justice. Since litigation is not a game of technicalities, every litigant should be afforded the amplest opportunity for the proper and just determination of his case, free from the constraints of technicalities. While petitioners failed to attach the proof of service in their petition before the CA, petitioners submitted an Affidavit of Service when they filed their Motion for Reconsideration. In this case, We deem it proper to consider that their belated submission of said proof of service constitutes substantial compliance. As to the failure of petitioners' counsel to update her PTR number, it must be considered that the purpose of requiring a counsel to indicate her PTR number is merely to protect the public from bogus lawyers. Notably, petitioners' counsel has a corresponding PTR number. However, she merely failed to indicate the updated one inadvertently. Her belated submission of the same must also be treated as substantial compliance for the danger which the law seeks to protect the public from is not present in this case.

2. ID.; RULES OF COURT; SINCE RULES OF PROCEDURE ARE DESIGNATED TO FACILITATE THE ATTAINMENT OF JUSTICE, STRICT AND RIGID APPLICATION THEREOF THAT TEND TO FRUSTATE SUBSTANTIAL JUSTICE MUST BE AVOIDED.—

> Although it is true that procedural rules should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice, this is not an inflexible tenet. After all, rules of procedure are mere tools designed to facilitate the attainment of justice. Their strict and rigid application especially on technical matters, which tends to frustrate rather than promote substantial justice, must be avoided.

APPEARANCES OF COUNSEL

Mila S. Raquid-Arroyo for petitioners.
Gina Ballebar for respondent.

D E C I S I O N

TIJAM, *J.*:

Before this Court is a Petition for Review on Certiorari[1] under Rule 45, seeking the reversal of the: (1) Resolution[2] dated March 29, 2012; and (2) Resolution[3] dated March 11, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 123550.

The Facts

Respondent Carmen Olivares Vda. De Pontillas averred that she and her late husband, Proceso, Sr. were the owners of a 863 square-meter residential lot located in Mataoroc, Minalabac, Camarines Sur declared under A.R.P. No. 97-015-0067 in the name of Proceso, Sr.[4]

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[1] *Rollo* at pp. 3-19.

[2] *Id*. at pp. 21-22.

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

[4] *Id*. at p. 77.

During the lifetime of Proceso, Sr., they allowed petitioners, spouses Proceso O. Pontillas, Jr. and Helen S. Pontillas to occupy a fourth of the above-described land.

On June 8, 2009, Proceso, Sr. died. After his death or sometime in February 2010, there was a falling out between petitioners and respondent.

On April 27, 2010, respondent, through counsel, formally demanded that petitioners vacate the subject property. However, petitioners refused to do the same. A complaint was then filed before the Office of the Lupong Tagapamayapa of Brgy. Mataoroc, Minalabac, Camarines Sur, but no settlement was reached.[5]

Subsequently, a complaint for unlawful detainer with damages was filed by respondent against petitioners. In said Complaint, respondent prayed that she be declared as the one entitled to the material and physical possession of the land in question and that petitioners be ordered to vacate the premises and to restore its physical possession to respondent. In support of her claim, respondent presented an Extrajudicial Settlement with Waiver of Rights dated July 5, 2010, whereby it is stated that all the properties left by Proceso, Sr., including the subject property, were waived by all the heirs in her favor.

For their part, petitioners maintained that after their marriage in 1978, an Affidavit of Waiver was executed by respondent and Proceso, Sr., giving them a portion of the subject land so they could build their house thereon. Also, Proceso, Jr. denied signing the Extrajudicial Settlement with Waiver; as such, he claimed that the same is a product of forgery.[6]

In a Decision[7] dated June 16, 2011, the Municipal Trial Court (MTC) dismissed the complaint for unlawful detainer with

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[5] *Id*.

[6] *Id*. at p. 78.

[7] *Id*. at pp. 77-80.

damages and ruled that the Extrajudicial Settlement with Waiver produces no effect because the signature of one of the heirs, respondent Proceso, Jr., was forged. The MTC further ruled that the subject property is part of the conjugal property of respondent and Proceso, Sr. Upon the death of the latter, their conjugal partnership of gains was dissolved so that all conjugal properties of the spouses during their marriage came under the regime of co-ownership among his heirs. As an heir of Proceso, Sr., petitioner Proceso, Jr. is a co-owner together with the other heirs of Proceso, Sr. As a co-owner, Proceso, Jr. has the right to stay on the land which includes that portion occupied by them until there has been a final liquidation and partition of the estate of his father.

Respondent filed an Appeal before the Regional Trial Court (RTC), Branch 24, Naga City.

In a Decision[8] dated November 23, 2011, the RTC held that the forgery was not sufficiently proven as mere variance of the signatures of petitioner Proceso, Jr. in said Settlement and the sample signatures produced cannot be considered as conclusive proof that the same were forged. Thus, on the strength of the Extrajudicial Settlement with Waiver, the RTC reversed the ruling of the MTC and ordered petitioners to vacate the subject property and to remove whatever structure they had introduced therein. Petitioners were also ordered to pay respondent a reasonable rental amounting to PhP 500.00 per month and costs of suit.

Petitioners filed a Petition for Review[9] under Rule 42 before the CA.

In a Resolution[10] dated March 29, 2012, the CA dismissed the petition outright for the following infirmities: (1) failure to append proof of service of the petition to the adverse party;

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[8] *Id*. at pp. 81-87.

[9] *Id*. at pp. 26-42.

[10] *Supra* Note 2, at 21-22.

and (2) failure to provide the updated PTR number of petitioners' counsel.

The petitioners filed a Motion for Reconsideration[11] but the same was denied in a Resolution[12] dated March 11, 2013.

Hence, this Petition.

The Issue

Whether or not the CA erred in dismissing the petition outright.

The Ruling

We grant the Petition.

Courts should not be unduly strict in cases involving procedural lapses that do not really impair the proper administration of justice. Since litigation is not a game of technicalities, every litigant should be afforded the amplest opportunity for the proper and just determination of his case, free from the constraints of technicalities.[13]

While petitioners failed to attach the proof of service in their petition before the CA, petitioners submitted an Affidavit of Service when they filed their Motion for Reconsideration. In this case, We deem it proper to consider that their belated submission of said proof of service constitutes substantial compliance.

As to the failure of petitioners' counsel to update her PTR number, it must be considered that the purpose of requiring a counsel to indicate her PTR number is merely to protect the public from bogus lawyers.[14] Notably, petitioners' counsel has a corresponding PTR number. However, she merely failed

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[11] *Rollo* at pp. 43-45.

[12] *Supra* Note 3, at 23-24.

[13] *Barra v. Civil Service Commission*, G.R. No. 205250, March 18, 2013.

[14] *Galicto v. Aquino III*, G.R. No. 193978, February 28, 2012.

to indicate the updated one inadvertently. Her belated submission of the same must also be treated as substantial compliance for the danger which the law seeks to protect the public from is not present in this case.

Lastly, the case of *MTM Garment Manufacturing, Inc., et al. v. CA, et al.*[15] cited by the CA is not squarely applicable in the present case. In *MTM Garment,* the procedural infirmities involve the failure to file a Petition for Certiorari within the 60-day period and the failure to file a motion for reconsideration. None of such procedural flaws exist in the instant case and on the contrary, it is undisputed that petitioners timely filed their petition before the CA.

Although it is true that procedural rules should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice, this is not an inflexible tenet. After all, rules of procedure are mere tools designed to facilitate the attainment of justice. Their strict and rigid application especially on technical matters, which tends to frustrate rather than promote substantial justice, must be avoided.[16]

WHEREFORE, the petition is **GRANTED.** The Resolutions dated March 29, 2012 and March 11, 2013 of the Court of Appeals are **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the Court of Appeals for further proceedings.

SO ORDERED.

Velasco, Jr. (Chairperson), *Bersamin, Reyes,* and *Jardeleza, JJ.,* concur.

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[15] G.R. No. 152336, June 9, 2005.

[16] *Tiorosio-Espinosa v. Hofilena-Europa,* G.R.No. 185746, January 20, 2016.

FIRST DIVISION

[G.R. No. 208936. April 17, 2017]

HERMA SHIPYARD, INC., and MR. HERMINIO ESGUERRA, *petitioners, vs.* **DANILO OLIVEROS, JOJIT BESA, ARNEL SABAL, CAMILO OLIVEROS, ROBERT NARIO, FREDERICK CATIG, RICARDO ONTALAN, RUBEN DELGADO, SEGUNDO LABOSTA, EXEQUIEL OLIVERIA, OSCAR TIROL and ROMEO TRINIDAD,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; PROJECT EMPLOYEE, DEFINED; TEST TO DETERMINE PROJECT-BASED EMPLOYMENT.— A project employee under Article 280 (now Article 294) of the Labor Code, as amended, is one whose 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. x x x The services of project-based employees are co-terminous with the project and may be terminated upon the end or completion of the project or a phase thereof for which they were hired. The principal test in determining whether particular employees were engaged as project-based employees, as distinguished from regular employees, is whether they were assigned to carry out a specific project or undertaking, the duration and scope of which was specified at, and made known to them, at the time of their engagement. It is crucial that the employees were informed of their status as project employees at the time of hiring and that the period of their employment must be knowingly and voluntarily agreed upon by the parties, without any force, duress, or improper pressure being brought to bear upon the employees or any other circumstances vitiating their consent.

2. ID.; ID.; ID.; RESPONDENTS KNOWINGLY AND VOLUNTARILY ENTERED INTO AND SIGNED THE PROJECT-BASED EMPLOYMENT CONTRACTS.— The records of this case reveal that for each and every project

respondents were hired, they were adequately informed of their employment status as project-based employees at least at the time they signed their employment contract. They were fully apprised of the nature and scope of their work whenever they affixed their signature to their employment contract. Their contracts of employment (mostly written in the vernacular) provide in no uncertain terms that they were hired as project-based employees whose services are coterminous with the completion of the specific task indicated therein. All their contracts of employment state clearly the date of the commencement of the specific task and the expected completion date thereof. They also contain a provision expressly stating that respondents' employment shall end upon the arrival of the target completion date or upon the completion of such project. x x x There is no indication that respondents were coerced into signing their employment contracts or that they affixed their signature thereto against their will. While they claim that they signed the said contracts in order to secure continuous employment, they have not, however, presented sufficient evidence to support the same other than their bare allegations. It is settled that "[c]ontracts for project employment are valid under the law."

3. **ID.; ID.; ID.; PERFORMANCE OF TASKS NECESSARY AND DESIRABLE TO THE USUAL BUSINESS OPERATION OF THE EMPLOYER WILL NOT AUTOMATICALLY RESULT IN THE REGULARIZATION OF PROJECT-BASED EMPLOYEES.—** It is settled, however, that project-based employees may or may not be performing tasks usually necessary or desirable in the usual business or trade of the employer. The fact that the job is usually necessary or desirable in the business operation of the employer does not automatically imply regular employment; neither does it impair the validity of the project employment contract stipulating fixed duration of employment. x x x Here, a meticulous examination of the contracts of employment reveals that while the tasks assigned to the respondents were indeed necessary and desirable in the usual business of Herma Shipyard, the same were distinct, separate, and identifiable from the other projects or contract services. x x x The CA thus erred in immediately concluding that since respondents were performing tasks necessary, desirable, and vital to Herma Shipyard's business operation, they are regular employees.

4. ID.; ID.; ID.; REPEATED REHIRING OF PROJECT EMPLOYEES TO DIFFERENT PROJECTS DOES NOT *IPSO FACTO* MAKE THEM REGULAR EMPLOYEES.— "[T]he repeated and successive rehiring [of respondents as project-based employees] does not [also], by and of itself, qualify them as regular employees. Case law states that length of service (through rehiring) is not the controlling determinant of the employment tenure [of project-based employees but, as earlier mentioned], whether the employment has been fixed for a specific project or undertaking, with its completion having been determined at the time of [their] engagement." Stated otherwise, the rule that employees initially hired on a temporary basis may become permanent employees by reason of their length of service is not applicable to project-based employees. x x x Indeed, if we consider the nature of Herma Shipyard's business, it is clear that Herma Shipyard only hires workers when it has existing contracts for shipbuilding and repair. It is not engaged in the business of building vessels for sale which would require it to continuously construct vessels for its inventory and consequently hire a number of permanent employees. x x x Hence, Herma Shipyard should be allowed "to reduce [its] work force into a number suited for the remaining work to be done upon the completion or proximate accomplishment of [each particular] project." As for respondents, since they were assigned to a project or a phase thereof which begins and ends at determined or determinable times, their services were lawfully terminated upon the completion of such project or phase thereof. Moreover, our examination of the records revealed other circumstances that convince us that respondents were and remained project-based employees, albeit repeatedly rehired. Contrary to their claim, respondents' employment were neither continuous and uninterrupted nor for a uniform period of one month; they were intermittent with varying durations, as well as gaps ranging from a few days to several weeks or months. These gaps coincide with the completion of a particular project and the start of a new specific and distinct project for which they were individually rehired. And for each completed project, petitioners submitted the required Establishment Employment Records to the DOLE which is a clear indicator of project employment. The records also show that respondents' employment had never been extended beyond the completion of each project or phase thereof for which they had been engaged.

5. ID.; ID.; ID.; THE QUESTIONED PROJECT EMPLOYMENT CONTRACT IS NOT SUBJECT TO CONDITION.— [P]aragraph 10 [of the project employment contract] is in harmony with the agreement of the parties that respondents' employment is coterminous with the particular project stated in their contract. It was placed therein to ensure the successful completion of the specific work for which respondents were hired. Thus, in case of delay or where said work is not finished within the estimated date of completion, respondents' period of employment can be extended until it is completed. In which case, the duration and nature of their employment remains the same as previously determined in the project employment contract; it is still coterminous with the particular project for which they were fully apprised of at the time of their engagement. As to the requirement that the completion or termination of the specific project or undertaking for which respondents were hired should be determined at the time of their engagement, we rule and so hold that it is enough that Herma Shipyard gave the approximate or target completion date in the project employment contract. Given the nature of its business and the scope of its projects which take months or even years to finish, we cannot expect Herma Shipyard to give a definite and exact completion date. It can only approximate or estimate the completion date. What is important is that the respondents were apprised at the time of their engagement that their employment is coterminous with the specific project and that should their employment be extended by virtue of paragraph 10 the purpose of the extension is only to complete the same specific project, and not to keep them employed even after the completion thereof. Put differently, paragraph 10 does not allow the parties to extend the period of respondents' employment after the completion of the specific project for which they were hired. Their employment can only be extended if that particular project, to which their employment depends, remains unfinished.

APPEARANCES OF COUNSEL

Sedalaw Averilla Defensor & Enrile for petitioners.
Cruz Law Office for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the Decision[2] dated May 30, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 118068 that reversed the Decisions of the National Labor Relations Commission (NLRC) and the Labor Arbiter and declared that Danilo Oliveros, Jojit Besa, Arnel Sabal, Camilo Oliveros, Robert Nario, Frederick Catig, Ricardo Ontalan, Ruben Delgado, Segundo Labosta, Exequiel Oliveria, Oscar Tirol and Romeo Trinidad (respondents) are regular employees of petitioner Herma Shipyard, Inc. (Herma Shipyard).

Factual Antecedents

Herma Shipyard is a domestic corporation engaged in the business of shipbuilding and repair. The respondents were its employees occupying various positions such as welder, leadman, pipe fitter, laborer, helper, etc.

On June 17, 2009, the respondents filed before the Regional Arbitration Branch III, San Fernando City, Pampanga a Complaint[3] for illegal dismissal, regularization, and non-payment of service incentive leave pay with prayer for the payment of full backwages and attorney's fees against petitioners. Respondents alleged that they are Herma Shipyard's regular employees who have been continuously performing tasks usually necessary and desirable in its business. On various dates, however, petitioners dismissed them from employment.

Respondents further alleged that as a condition to their continuous and uninterrupted employment, petitioners made them sign employment contracts for a fixed period ranging from

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[1] *Rollo*, pp. 3-58.

[2] CA *rollo*, Vol. I, pp. 480-493; penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Jose C. Reyes, Jr. and Mario V. Lopez.

[3] Records, pp. 1-2.

one to four months to make it appear that they were project-based employees. Per respondents, petitioners resorted to this scheme to defeat their right to security of tenure, but in truth there was never a time when they ceased working for Herma Shipyard due to expiration of project-based employment contracts. In fact, if they were indeed project employees, petitioners should have reported to the Department of Labor and Employment (DOLE) the completion of such project. But petitioners have never submitted such report to the DOLE.

For their defense, petitioners argued that respondents were its project-based employees in its shipbuilding projects and that the specific project for which they were hired had already been completed. In support thereof, Herma Shipyard presented contracts of employment, some of which are written in the vernacular and denominated as *Kasunduang Paglilingkod (Pang-Proyektong Kawani).*[4]

Ruling of the Labor Arbiter

On May 24, 2010, the Labor Arbiter rendered a Decision[5] dismissing respondents' Complaint. The Labor Arbiter held that respondents were project-based employees whose services were validly terminated upon the completion of the specific work for which they were individually hired. The dispositive portion of the Labor Arbiter's Decision reads:

> WHEREFORE, premises considered, let the instant complaint be, as it is hereby ORDERED dismissed for lack of merit.
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> All the money claims as well as moral and exemplary damages and attorney's fees raised by the complainants in their complaint are likewise DENIED for lack of merit.
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> SO ORDERED.[6]

Respondents thus appealed to the NLRC.

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[4] *Rollo*, pp. 116-143.

[5] Records, pp. 109-119; penned by Labor Arbiter Reynaldo V. Abdon.

[6] *Id.* at 118-119.

Ruling of the National Labor Relations Commission

On September 7, 2010, the NLRC rendered its Decision[7] denying respondents' appeal and affirming *in toto* the Decision of the Labor Arbiter. It sustained the finding of the Labor Arbiter that based on their employment contracts, respondents were project-based employees hired to do a particular project for a specific period of time.

Respondents moved for reconsideration but the NLRC denied their Motion for Reconsideration[8] in its November 11, 2010 Resolution.[9]

Unfazed, respondents filed a Petition for *Certiorari*[10] before the CA imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the labor tribunals in finding that they were project-based employees and in not awarding them service incentive leaves. Respondents contended that the labor tribunals grievously erred in relying on the project employment contracts which were for a uniform duration of one month. They argued that if it were true that they were project-based employees, the duration of their employment should have coincided with the completion of the project for which they were hired and not for a uniform period of one month.

Ruling of the Court of Appeals

On May 30, 2013, the CA rendered its assailed Decision[11] granting respondents' Petition for *Certiorari* and setting aside the labor tribunals' Decisions. It held that even if the contracts of employment indicated that respondents were hired as project-based workers, their employment status have become regular

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[7] *Id*. at 164-172; penned by Commissioner Napoleon M. Menese and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Teresita D. Castillon-Lora.

[8] *Id*. at 182-187.

[9] *Id*. at 196-197.

[10] CA *rollo*, Vol. I, pp. 9-18.

[11] *Id*. at 480-493.

since: they were performing tasks that are necessary, desirable, and vital to the operation of petitioners' business; petitioners failed to present proof that respondents were hired for a specific period or that their employment was coterminous with a specific project; it is not clear from the contracts of employment presented that the completion or termination of the project or undertaking was already determined at the time petitioners engaged the services of respondents; respondents were made to work not only in one project but also in different projects and were assigned to different departments of Herma Shipyard; respondents were repeatedly and successively rehired as employees of Herma Shipyard; except with regard to respondents' last employment, petitioners failed to present proof that they reported to the nearest public employment office the termination of respondents' previous employment or every time a project or a phase thereof had been completed; and, petitioners failed to file as many reports of termination as there were shipbuilding and repair projects actually completed. The CA concluded that the project employment contracts were indeed used as a device to circumvent respondents' right to security of tenure. The *fallo* of the assailed CA Decision reads:

> WHEREFORE, the instant petition for *certiorari* is GRANTED. The assailed decision and resolution of the respondent National Labor Relations Commission are REVERSED and SET ASIDE, and a new judgment is hereby rendered holding petitioners as regular employees and declaring their dismissal as illegal. Accordingly, private respondents are hereby ordered to REINSTATE petitioners to their former employment. Should reinstatement be not possible due to strained relations, private respondents are ordered to pay petitioners their separation pay equivalent to one-month pay or one-half-month pay for every year of service, whichever is higher, with full backwages computed from the time of dismissal up to the finality of the decision. For this purpose, the case is hereby REMANDED to the respondent NLRC for the computation of the amounts due petitioners.
>
> SO ORDERED.[12]

[12] *Id*. at 492.

Petitioners moved for reconsideration. In a Resolution[13] dated August 30, 2013, however, the CA denied their Motion for Reconsideration.[14]

Hence, this Petition for Review on *Certiorari* assailing the May 30, 2013 Decision and August 30, 2013 Resolution of the CA. Petitioners anchor their Petition on the following arguments:

A

PREVAILING JURISPRUDENCE DICTATES THAT RESPONDENTS ARE NOT REGULAR EMPLOYEES OF PETITIONER [HERMA SHIPYARD]. THEY ARE PROJECT EMPLOYEES WHOSE TERMS OF EMPLOYMENT WERE VALIDLY TERMINATED UPON THE EXPIRATION OF THE TERM OF THEIR PROJECT EMPLOYMENT CONTRACTS.

B

THE ASSAILED DECISION AND ASSAILED RESOLUTION RULED ON ISSUES WHICH WERE NEITHER DISPUTED IN RESPONDENTS' PETITION FOR CERTIORARI NOR RAISED IN THE DECISION OF THE HONORABLE [NLRC].

C

AS BORNE BY THE PROJECT EMPLOYMENT CONTRACTS OF RESPONDENTS AND TERMINATION REPORTS SUBMITTED TO THE DEPARTMENT OF LABOR AND EMPLOYMENT, RESPONDENTS ARE UNDOUBTEDLY PROJECT EMPLOYEES OF PETITIONER [HERMA SHIPYARD].

D

THE HONORABLE COURT OF APPEALS FAILED TO CONSIDER THAT RESPONDENTS' PETITION FOR CERTIORARI DID NOT RAISE AS AN ISSUE THE ACTS COMMITTED BY THE HONORABLE [NLRC] WHICH AMOUNTED TO GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.

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[13] *Id*. at 1030-1031.

[14] *Id*. at 504-554.

E

BY VIRTUE OF THE DOCTRINE OF SEPARATE JURIDICAL PERSONALITY, PETITIONER ESGUERRA SHOULD NOT BE HELD LIABLE IN THE INSTANT LABOR COMPLAINT.

F

THE HONORABLE COURT OF APPEALS FAILED TO GIVE WEIGHT AND RESPECT TO THE FACTUAL FINDINGS OF THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION AND THE HONORABLE LABOR ARBITER.

G

THE HONORABLE COURT OF APPEALS DID NOT ACQUIRE JURISDICTION OVER THE INSTANT CASE AS THE HONORABLE NLRC'S DECISION AND RESOLUTION ALREADY BECAME EXECUTORY CONSIDERING THAT RESPONDENTS' PETITION FOR CERTIORARI WAS FILED BEYOND THE REGLEMENTARY PERIOD PRESCRIBED BY THE RULES.[15]

Petitioners contend, among others, that necessity and desirability of respondents' services in Herma Shipyard's business are not the only factors to be considered in determining the nature of respondents' employment. They assert that the CA should have also taken into consideration the contracts of employment signed by the respondents apprising them of the fact that their services were engaged for a particular project only and that their employment was coterminous therewith. The authenticity and genuineness of said contracts, according to petitioners, were never disputed by the respondents during the pendency of the case before the labor tribunals. It was only in their Comment[16] to the instant Petition that respondents disavow said contracts of employment for allegedly being fictitious.

Petitioners aver that the CA also erred in ruling that the duration of respondents' employment depends upon a progress

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[15] *Rollo*, pp. 1078-1079.

[16] *Id*. at 1022-1028.

accomplishment as paragraph 10 of the employment contract readily shows that the same is dependent upon the completion of the project indicated therein.

With regard to the repeated rehiring of the respondents, petitioners insist that the same will not result in respondents becoming regular employees because length of service does not determine employment status. What is controlling of project-based employment is whether the employment has been fixed for a specific project or undertaking, its completion having been determined and made known to the employees at the time of their engagement. Thus, regardless of the number of projects for which respondents had been repeatedly hired, they remained project-based employees because their engagements were limited to a particular project only. Petitioners emphasize that Herma Shipyard merely accepts contracts for shipbuilding and for repair of vessels. It is not engaged in the continuous production of vessels for sale which would necessitate the hiring of a large number of permanent employees.

Respondents, for their part, deny having worked for a specific project or undertaking. They insist that the employment contracts presented by petitioners purportedly showing that they were project-based employees are fictitious designed to circumvent the law. In any case, said contracts are not valid project employment contracts because the completion of the project had not been determined therein or at the time of their engagement. In fact, the duration of their contracts with Herma Shipyard may be extended as needed for the completion of various projects and not for a definite duration. And even assuming that they were previously hired as project employees, their employment ceased to be coterminous with a specific project and became regular after they were repeatedly rehired by the petitioners for various projects.

Our Ruling

The Petition is impressed with merit.

At the outset, the issue of whether petitioners were project-based employees is a question of fact that, generally, cannot

be passed and ruled upon by this Court in a petition for review on *certiorari* filed under Rule 45 of the Rules of Court. It is settled that the jurisdiction of this Court in a Rule 45 petition is generally limited to reviewing errors of law. Nevertheless, in view of the opposing views of the tribunals below, this Court shall take cognizance of and resolve the factual issues involved in this case.[17]

Who are project-based employees?

A project employee under Article 280 (now Article 294)[18] of the Labor Code, as amended, is one whose 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. Thus:

> 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 service to be performed is seasonal in nature and the employment is for the duration of the season.
>
> x x x x x x x x x (Emphasis supplied)

The services of project-based employees are co-terminous with the project and may be terminated upon the end or completion of the project or a phase thereof for which they were hired.[19] The principal test in determining whether particular

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[17] *Dohle-Philman Manning Agency, Inc. v. Heirs of Andres G. Gazzingan,* G.R. No. 199568, June 17, 2015, 759 SCRA 209, 224-225.

[18] The provisions of the Labor Code had been renumbered due to the taking effect of Republic Act No. 10151 entitled AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS, THEREBY REPEALING ARTICLES 130 AND 131 OF THE LABOR CODE.

[19] *ALU-TUCP v. National Labor Relations Commission,* 304 Phil. 844, 850 (1994).

employees were engaged as project-based employees, as distinguished from regular employees, is whether they were assigned to carry out a specific project or undertaking, the duration and scope of which was specified at, and made known to them, at the time of their engagement.[20] It is crucial that the employees were informed of their status as project employees at the time of hiring and that the period of their employment must be knowingly and voluntarily agreed upon by the parties, without any force, duress, or improper pressure being brought to bear upon the employees or any other circumstances vitiating their consent.[21]

Respondents knowingly and voluntarily entered into and signed the project-based employment contracts.

The records of this case reveal that for each and every project respondents were hired, they were adequately informed of their employment status as project-based employees at least at the time they signed their employment contract. They were fully apprised of the nature and scope of their work whenever they affixed their signature to their employment contract. Their contracts of employment (mostly written in the vernacular) provide in no uncertain terms that they were hired as project-based employees whose services are coterminous with the completion of the specific task indicated therein. All their contracts of employment state clearly the date of the commencement of the specific task and the expected completion date thereof. They also contain a provision expressly stating that respondents' employment shall end upon the arrival of the target completion date or upon the completion of such project. Except for the underlined portions, the contracts of employment read:

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[20] *ALU-TUCP v. National Labor Relations Commissions, id*. at 851; *Tomas Lao Construction v. National Labor Relations Commission*, 344 Phil. 268, 278 (1997); *Jamias v. National Labor Relations Commission*, G.R. No. 159350, March 9, 2016; *Pasos v. Philippine National Construction Corporation*, 713 Phil. 416, 433 (2013).

[21] *Jamias v. National Labor Relations Commission*, *id*.

KASUNDUAN NG PAGLILINGKOD
(PANG-PROYEKTONG KAWANI)

PARA SA KAALAMAN NG LAHAT:

ALAMIN NG LAHAT NA:

HERMA SHIPYARD, INC., isang Korporasyon na itinatag at nananatili sa ilalim ng batas ng Pilipinas at may tanggapan sa Herma Industrial Complex, Mariveles, Bataan na kinakatawan [ni] EDUARDO S. CARANCIO ay makikilala bilang KUMPANYA;

OLIVEROS, CAMILO IBAÑEZ, sapat ang gulang, Pilipino, may asawa/walang asawa na tubong _____, naninirahan sa BASECO Country Aqwawan, Mariveles, Bataan dito ay makikilala bilang PANG-PROYEKTONG KAWANI;

NAGSASAYSAY NA:

NA, ang Kumpanya ay nangangailangan ng paglilingkod ng isang Ship Fitter Class A sa panandaliang panahon at bilang pang suporta sa paggawa at pagsasaayos ng proyekto para sa MT Masinop.

NA, ang PANG-PROYEKTONG KAWANI ay nagpapahayag ng kanyang kakayahan at kagustuhang isagawa ang proyektong iniaalok ng KUMPANYA at handing tuparin ang nasabing Gawain sa KUMPANYA sa ilalim ng sumusunod na kondisyon;
Bilang pagkilala sa mga nasabing batayan, ang mga kinauukulang partido ay nagkakasundo at nagtatakda ng mga sumusunod:

1) ***Ang KUMPANYA ay pumapayag na bayaran ang serbisyo ng PANG-PROYEKTONG KAWANI bilang isang Ship Fitter Class A sa nasabing proyekto simula 4/1/2009 hanggang 4/30/2009 o sa sandaling matapos ang nasabing gawain o anumang bahagi nito kung saan siya ay inupahan o kung saan ang kanyang serbisyo ay kailangan at ang PANG-PROYEKTONG KAWANI ay sumasang-ayon. Ang mga gawaing nabanggit sa kasunduang ito ay hindi pangkaraniwang ginagawa ng KUMPANYA kundi para lamang sa itinakdang panahon o hanggang matapos ang nasabing proyekto;***

2) Ang KUMPANYA ay may karapatan na pawalang bisa o kanselahin ang kasunduang ito anomang oras kung mapatutunayan na ang PANG-PROYEKTONG KAWANI ay walang kakayahan na gawin ang naturang gawain kung saan siya ay inupahan nang naaayon sa pamantayan o sa kagustuhan ng KUMPANYA o sa anumang dahilan na naaayon sa batas, kasama na rito ang paglabag ng PANG-PROYEKTONG KAWANI sa mga alituntunin ng KUMPANYA;

3) Ang PANG-PROYEKTONG KAWANI ay sumasang-ayon na gampanan ang mga gawaing ito para sa KUMPANYA buong katapatan at husay;

4) Ang PANG-PROYEKTONG KAWANI ay magtratrabaho ng walong (8) oras sa bawat araw ng trabaho ayon sa oras na itinakda ng KUMPANYA at siya ay babayaran ng ~~₱~~405 (~~₱~~397.00/basic + 8/ecola) bawat araw at ito ay kanyang matatanggap tuwing ika-labinlimang araw at katapusan ng buwan na kanyang ipinagtrabaho. Ang PANG-PROYEKTONG KAWANI ay hindi babayaran sa mga araw na hindi siya pumasok sa trabaho sa KUMPANYA;

5) Lahat ng kaalaman o impormasyon na maaaring mabatid ng PANG-PROYEKTONG KAWANI habang siya ay may kaugnayan sa KUMPANYA ay iingatan niya at hindi maaaring gamitin, ipasipi o ipaalam sa kaninuman ng walang kaukulang pahintulot lalo na kung ito ay maaaring makapinsala sa KUMPANYA;

6) Ang PANG-PROYEKTONG KAWANI ay nangangako na ibibigay ang kanyang panahon at buong kakayahan para sa kapakanan ng KUMPANYA, tutugon sa lahat ng alituntunin ng KUMPANYA, susunod sa utos ng mga namumuno na naaayon sa batas, at tatanggapin ang pananagutan sa lahat ng kanyang mga galaw na maaaring makapinsala o makasakit sa kapwa kawani at sa ari-arian ng KUMPANYA, ganun din ang kapakanan at ari-arian ng ibang tao;

7) ***Nababatid at nauunawaan ng bawat partido sa kasunduang ito na ang pang-proyekto kawani ay hindi maituturing na pampirmihan or "regular" na kawani ano man at gaano***

man katagal ang kanyang paglingkod sa Kumpanya. Sa ganitong kadahilanan, ang pang-proyekto kawani ay hindi tatanggap ng karaniwang benepisyo na ipinagkakaloob sa pampirmihan o "regular" na kawani; katulad ng bonuses, medical insurance, at retirement benefits, maliban sa ilang benepisyo na pinagkakaloob ng batas.

8) Sa pagtupad ng mga nasabing gawa, nalalaman at inaasahan ng PANG-PROYEKTONG KAWANI ang ilang kaakibat na peligro sa maayos na pagganap ng naturang mga gawa. Alam ng PANG-PROYEKTONG KAWANI na ang KUMPANYA ay walang kinalaman sa bagay na ito at hindi dapat panagutin ukol dito;

9) Ang lahat ng mga nakasaad at nasusulat na mga kondisyon sa kasunduang ito ay nauunawaan at naiintindihan ng PANG-PROYEKTONG KAWANI;

10) Ang kasunduang ito ay maaaring palawigin ng mas mahabang panahon na maaaring kailanganin para sa matagumpay na pagtatapos ng mga gawa o proyektong pinagkasunduan;

BILANG SAKSI sa kasundang ito, ang mga partido ay lumagda ngayong ika-1 ng Abril 2009 sa Mariveles, Bataan, Pilipinas;[22] (Emphases supplied)

There is no indication that respondents were coerced into signing their employment contracts or that they affixed their signature thereto against their will. While they claim that they signed the said contracts in order to secure continuous employment, they have not, however, presented sufficient evidence to support the same other than their bare allegations. It is settled that "[c]ontracts for project employment are valid under the law."[23] Thus, in *Jamias v. National Labor Relations Commission*,[24] this Court upheld the project employment contracts

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[22] Records, pp. 26-27.

[23] *Villa v. National Labor Relations Commission*, 348 Phil. 116, 141 (1998).

[24] *Supra* note 20.

which were knowingly and voluntarily signed by the employees for want of proof that the employers employed force, intimidation, or fraudulently manipulated them into signing the same. Similarly in this case, by voluntarily entering into the aforementioned project employment contracts, respondents are deemed to have understood that their employment is coterminous with the particular project indicated therein. They cannot expect to be employed continuously beyond the completion of such project because a project employment terminates as soon as it is completed.

Performance by project-based employees of tasks necessary and desirable to the usual business operation of the employer will not automatically result in their regularization.

In disregarding the project employment contracts and ruling that respondents are regular employees, the CA took into consideration that respondents were performing tasks necessary and desirable to the business operation of Herma Shipyard and that they were repeatedly hired. Thus:

> [I]t is significant to note that even if the contract of employment indicates that [respondents] were hired as project workers, they are still considered regular employees on the ground that as welder, ship fitter, pipe fitter, expediter and helper, [respondents'] services are all necessary, desirable and vital to the operation of the ship building and repair business of [petitioners]. A confirmation of the necessity and desirability of their services is the fact that [respondents] were continually and successively assigned to the different projects of private respondents even after the completion of a particular project to which they were previously assigned. On this score, it cannot be denied that petitioners were regular employees.[25]

It is settled, however, that project-based employees may or may not be performing tasks usually necessary or desirable in

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[25] CA *rollo*, p. 485.

the usual business or trade of the employer. The fact that the job is usually necessary or desirable in the business operation of the employer does not automatically imply regular employment; neither does it impair the validity of the project employment contract stipulating a fixed duration of employment.[26] As this Court held in *ALU-TUCP v. National Labor Relations Commission*:[27]

> 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, 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. A construction company ordinarily carries out two or more discrete identifiable construction projects: e.g., a twenty-five-storey hotel in Makati; a residential condominium building in Baguio City; and a domestic air terminal in Iloilo City. 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.[28]

Here, a meticulous examination of the contracts of employment reveals that while the tasks assigned to the respondents were indeed necessary and desirable in the usual business of Herma

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[26] *Palomares v. National Labor Relations Commission*, 343 Phil. 213, 223 (1997).

[27] *Supra* note 19.

[28] *Id*. at 851-852.

Shipyard, the same were distinct, separate, and identifiable from the other projects or contract services. Below is the summary of respondents' employment contracts indicating the positions they held, the specific projects for which they were hired, and the duration or expected completion thereof:

Names	Positions	Projects	Durations
1. Ricardo J. Ontolan	Pipe Fitter	MT Masinop	03/18/09-03/31/09[29]
	Pipe Fitter	12mb_phase 3	09/15/08-12/20/08[30]
	Pipe Fitter	12mb/ Petrotrade 6	05/29/08-08/31/08[31]
	Pipe Fitter	Alcem Calaca	04/29/08 completion[32]
	Pipe Fitter	Hull 0102-phase 6	12/17/07-03/03/08[33]
	Pipe Fitter	Hull 0103 & Hull 0104-phase 1	09/11/07-12/11/07[34]
2. Robert T. Nario	Welder 6G	MT Masinop	03/18/09-03/31/09[35]
	Welder 6G	12 mb/ Matikas/ Red Dragon	06/02/08-07/31/08[36]
	Welder 6G	22mb/ 12mb/ Galapagos/ Petrotrade 7/ Ma Oliva/ Solid Sun/ Hagonoy/ Banga Uno/Bigaa	03/04/08-06/05/08[37]
	Welder 6G	Hull 0102-phase 5	10/18/07-12/18/07[38]
3. Oscar J. Tirol	Pipe Fitter Class B	Red Dragon (installation of lube oil, diesel oil, air compressed line, freshwater cooling, lavatory, sea water pipe line)	01/16/09-02/15/09[39]

[29] CA *rollo*, Vol. I, p. 586.

[30] *Id*. at 593 and 595.

[31] *Id*. at 613.

[32] *Id*. at 598.

[33] *Id*. at 603 and 605.

[34] *Id*. at 608 and 610.

[35] *Id*. at 624 and 626.

[36] *Id*. at 635.

[37] *Id*. at 631.

[38] *Id*. at 619.

[39] *Id*. at 639.

	Pipe Fitter	MT Magino/MV Diana Petrotrade 7/Solid Gold	06/27/08-completion[40] 02/08/08[41]-02/08/08[42]
4. Exequiel R. Oliveria	Leadman	12mb/Petrotrade 6	05/29/08-08/31/08[43]
	Leadman	Red Dragon	04/29/08-05/31/08[44]
	Leadman	Hull 0102-phase 6	12/01/07[45]
	Leadman	Hull 0102-phase 5	03/03/08[46]
	Leadman	Hull 0102-phase 4	09/11/07-11/30/07[47] 06/07/07-08/27/07[48]
5. Arnel S. Sabal	Leadman	MT Masinop	03/18/09-03/31/09[49]
	Leadman	12mb-phase 3	09/15/08[50]-12/20/08[51]
	Leadman	12mb/Petrotrade 6	05/29/08-08/31/08[52]
	Leadman	22mb/12mb/Galapagos/ Petrotrade 7/ Ma Oliva/ Solid Sun/ Hagonoy/ Banga Uno/ Bigaa	03/04/08-06/05/08[53]
	Leadman	Hull 0102-phase 6	12/01/2007[54]-3/03/08[55]
	Leadman	Hull 0102-phase 5	09/11/07-11/30/07[56]

[40] *Id*. at 643.

[41] *Id*. at 648.

[42] *Id*. at 650.

[43] *Id*. at 669.

[44] *Id*. at 671.

[45] *Id*. at 659.

[46] *Id*. at 651.

[47] *Id*. at 664.

[48] *Id*. at 654.

[49] *Id*. at 735.

[50] *Id*. at 730.

[51] *Id*. at 732.

[52] *Id*. at 721.

[53] *Id*. at 725.

[54] *Id*. at 716.

[55] *Id*. at 718.

[56] *Id*. at 711.

	Pipe Fitter	Hull 0102-phase 4	06/13/07-09/04/07[57]
		Hull 0102-phase 2	01/15/07-03/30/07[58]
	Pipe Fitter	Hull 0102	01/08/07-completion[59]
	Pipe Fitter	Petro Trade 8/EUN HEE	05/17/06-completion[60]
	Pipe Fitter	MT Angat	06/02/05[61]-06/25/05[62]
	Pipe Fitter	M/T Pandi	12/08/04-completion[63]
	Pipe Fitter	M/T Makisig	11/08/04-completion[64]
	Pipe Fitter	Petro Trade – 7	08/12/04[65]-09/13/04[66]
6. Segundo Q. Labosta, Jr.	ABS Welder 6G	MT Masinop	03/18/09-03/31/09[67]
	ABS Welder 6G	12mb-phase 3	09/26/08-12/20/08[68]
	ABS Welder 6G	Petrotrade 6/12 mb	08/01/08-10/31/08[69]
	ABS Welder 6G	Cagayan de Oro/ Petrotrade 6/ Plaridel	06/01/08-07/31/08[70]
7. Jojit A. Besa	Leadman – ABS 6G	MT Masinop	03/18/09-03/31/09[71]
	Leadman – ABS 6G	12mb/Barge Kwan Sing/ Solid Pearl	01/16/09-03/14/09[72]

[57] *Id*. at 706.
[58] *Id*. at 701.
[59] *Id*. at 699.
[60] *Id*. at 692.
[61] *Id*. at 688.
[62] *Id*. at 691.
[63] *Id*. at 675.
[64] *Id*. at 683.
[65] *Id*. at 679.
[66] *Id*. at 682.
[67] *Id*. at 747.
[68] *Id*. at 742.
[69] *Id*. at 753.
[70] *Id*. at 758.
[71] *Id*. at 823.
[72] *Id*. at 770 and 825.

	Leadman – ABS 6G	12mb-phase 3	10/10/08-12/20/08[73]
	ABS Welder 6G	Hull 0102-phase 6	12/01/07-02/29/08[74]
	Pipe Welder	Hull 0102-phase 4	06/07/07-08/29/07[75]
	Pipe Welder	Hull 0102-phase 4	06/01/07-08/27/07[76]
	Pipe Fitter	MT Matilde/M/Tug Mira	08/07/06-completion[77]
	Pipe Fitter	MT Marangal/ MT Masikap/ MT Maginoo/ Petro Trade 8	04/15/06-completion[78]
	Pipe Fitter/Welder	MV ST Ezekiel Moreno	03/01/06-completion[79]
	Pipe Fitter	MT Plaridel/Monalinda 95/Tug Boat Sea Lion	11/03/05-completion[80]
	Pipe Fitter	MT Angat/Banga Dos	05/31/05-06/30/05
	Pipe Fitter	M/T Makisig	11/08/04-completion[81]
	Pipe Fitter	M/T Baliuag Oceantique	10/18/04-completion[82]
	Pipe Fitter	Petro Trade - 7 Petro Trade V/Guiguinto	9/17/04-one month/ completion[83]
	Pipe Fitter		08/03/04-two months/ completion[84]
	Pipe Fitter		07/03/04-one month/ completion[85]

[73] *Id*. at 797 and 799.

[74] *Id*. at 802.

[75] *Id*. at 787.

[76] *Id*. at 829.

[77] *Id*. at 765.

[78] *Id*. at 763.

[79] *Id*. at 779.

[80] *Id*. at 819.

[81] *Id*. at 815.

[82] *Id*. at 811.

[83] *Id*. at 775.

[84] *Id*. at 807.

[85] *Id*. at 792.

8. Camilo I. Oliveros	Ship Fitter Class A	MT Masinop	04/01/09-04/30/09[86]
	Leadman	Petrotrade 6/ Plaridel/ Red Dragon	06/03/08-09/10/08[87]
	ABS Welder 6G	Hull 0102/0103	01/15/08-completion[88]
	Welder	Hull 0102-phase 5	09/11/07-12/04/07[89]
	Welder	Hull 0102-phase 4	06/06/07-08/28/07[90]
	Welder	Hull 0102-phase 3	04/12/07-06/12/07[91]
	Welder	Hull 0102-phase 2	01/24/07-03/30/07[92]
	Ship Welder	22 mb oil tanker	09/06/06-completion[93]
9. Romeo I. Trinidad	Helper	Modernization project – painting of prod'n bldg. and overhead crane	01/24/07-01/28/07[94]
	Laborer	Pin Jiq assembly, building table construction, painting of ex-oxygen bldg, frabrication of slipway railings	09/10/07-12/10/07[95]
	Laborer	Ground level of main entrance road & CHB wall plastering/repair of warehouse no 1 for conversion to training bldg.	04/23/07-05/31/07[96]
	Electrician/ Laborer	Construction of launchway and perimeter fence	12/04/06-completion[97]

[86] *Id*. at 858.
[87] *Id*. at 866.
[88] *Id*. at 871.
[89] *Id*. at 851.
[90] *Id*. at 839.
[91] *Id*. at 833.
[92] *Id*. at 845.
[93] *Id*. at 878.
[94] *Id*. at 893.
[95] *Id.* at 887.
[96] *Id*. at 883.
[97] *Id*. at 898.

10. Ruben F. Delgado	Leadman	Red Dragon (water tight door installation, soft batch)	01/16/09-02/15/09[98]
	Leadman	Red Dragon	10/13/08-12/20/08[99]
	Leadman	MV Ma. Diana	06/28/08-completion[100]
	Ship Fitter	Hull 0102-Phase 4	05/30/07-08/26/07[101]
	Ship Fitter	Thomas Cloma	12/03/07-completion[102]
	Ship Fitter	MV Solid Jade/ Construction of New Caisson Gate	03/10/07-completion[103]
	Ship Fitter	MT Hagonoy	02/01/07[104]- 02/21/07[105]
	Ship Fitter	MT Mabiuag	01/09/07-completion[106]
	Ship Fitter	MT Ma Xenia	12/18/06[107]-1/07/07[108]
11. Danilo I. Oliveros	Welder 3G & 4G	MT Hagonoy/ MT Masinop/MT Matikas	04/01/09-04/15/09[109]
	Welder 3G & 4G	Hagonoy	03/20/09-03/31/09[110]
	Welder 3G & 4G	12mb-phase 3	09/25/08-12/20/08[111]

[98] *Id*. at 927.
[99] *Id*. at 922.
[100] *Id*. at 917.
[101] *Id*. at 932.
[102] *Id*. at 912.
[103] *Id.* at 936.
[104] *Id*. at 907.
[105] *Id*. at 909.
[106] *Id*. at 902.
[107] *Id*. at 942.
[108] *Id*. at 944.
[109] *Id*. at 965.
[110] *Id*. at 958.
[111] *Id*. at 971.
[112] *Id*. at 953.

	Welder	12mb/Petrotrade 6	07/01/08-09/30/08[112]
	Welder 3G & 4G	Hull 0102-phase 6	12/08/07-03/08/08[113]
	Welder	Hull 0102-phase 5	09/10/07-12/10/07[114]
	Welder	Hull 0102	12/19/06-completion[115]
12. Frederick C. Catig	Pipe Fitter Class C	MT Masinop	02/06/09-02/28/09[116]
	Pipe Fitter Class C	12mb	01/08/09-01/31/09[117]
	Helper	12mb_phase 3	09/15/08-completion[118]
	Helper	12mb/Petrotrade 6	05/29/08-08/31/08[119]
	Helper	Hull 0102-phase 6	01/02/08-03/31/08[120]
	Helper	Hull 0102, Hull 0103, Hull 0104	10/01/07-12/31/07[121]
	Helper	Hull 0103 phase 1	07/25/07-09/31/07[122]

As shown above, respondents were hired for various projects which are distinct, separate, and identifiable from each other. The CA thus erred in immediately concluding that since respondents were performing tasks necessary, desirable, and vital to Herma Shipyard's business operation, they are regular employees.

Repeated rehiring of project employees to different projects does not ipso facto make them regular employees.

"[T]he repeated and successive rehiring [of respondents as project-based employees] does not [also], by and of itself,

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[113] *Id*. at 976.

[114] *Id*. at 947.

[115] *Id*. at 981.

[116] *Id*. at 1014.

[117] *Id*. at 1020.

[118] *Id*. at 1007.

[119] *Id*. at 997.

[120] *Id*. at 1002.

[121] *Id*. at 992.

[122] *Id*. at 987.

qualify them as regular employees. Case law states that length of service (through rehiring) is not the controlling determinant of the employment tenure [of project-based employees but, as earlier mentioned], whether the employment has been fixed for a specific project or undertaking, with its completion having been determined at the time of [their] engagement."[123] Stated otherwise, the rule that employees initially hired on a temporary basis may become permanent employees by reason of their length of service is not applicable to project-based employees. Our ruling in *Villa v. National Labor Relations Commission*[124] is instructive on the matter, *viz*.:

> Thus, the fact that petitioners worked for NSC under different project employment contracts for several years cannot be made a basis to consider them as regular employees, for they remain project employees regardless of the number of projects in which they have worked. Length of service is not the controlling determinant of the employment tenure of a project employee. In the case of Mercado Sr. v. NLRC, this Court ruled that the proviso in the second paragraph of Article 280, providing that an employee who has served for at least one year, shall be considered a regular employee, relates only to casual employees and not to project employees.

The rationale for the inapplicability of this rule to project-based employees was discussed in *Dacles v. Millenium Erectors Corporation*,[125] to wit:

> x x x While generally, length of service provides a fair yardstick for determining when an employee initially hired on a temporary basis becomes a permanent one, entitled to the security and benefits of regularization, this standard will not be fair, if applied to the construction industry because construction firms cannot guarantee work and funding for its payrolls beyond the life of each project as they have no control over the decisions and resources of project

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[123] *Dacles v. Millenium Erectors Corporation*, G.R. No. 209822, July 8, 2015, 762 SCRA 420, 431.

[124] *Supra* note 23 at 144-145.

[125] *Supra* note 123.

proponents or owners. Thus, once the project is completed it would be unjust to require the employer to maintain these employees in their payroll since this would be tantamount to making the employee a privileged retainer who collects payment from his employer for work not done, and amounts to labor coddling at the expense of management.[126]

Indeed, if we consider the nature of Herma Shipyard's business, it is clear that Herma Shipyard only hires workers when it has existing contracts for shipbuilding and repair. It is not engaged in the business of building vessels for sale which would require it to continuously construct vessels for its inventory and consequently hire a number of permanent employees. In *Sandoval Shipyards, Inc. v. National Labor Relations Commission*[127] where therein petitioner was engaged in a similar kind of business, this Court opined that:

> It is significant to note that the corporation does not construct vessels for sale or otherwise which will demand continuous productions of ships and will need permanent or regular workers. It merely accepts contracts for shipbuilding or for repair of vessels from third parties and, only, on occasion when it has work contract of this nature that it hires workers to do the job which, needless to say, lasts only for less than a year or longer.[128]
>
> The completion of their work or project automatically terminates their employment, in which case, the employer is, under the law, only obliged to render a report on the termination of the employment.

Hence, Herma Shipyard should be allowed "to reduce [its] work force into a number suited for the remaining work to be done upon the completion or proximate accomplishment of [each particular] project."[129] As for respondents, since they were assigned to a project or a phase thereof which

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[126] *Id*. at 431-432.

[127] 221 Phil. 360 (1985).

[128] *Id*. at 364.

[129] *Villa v. National Labor Relations Commission*, *supra* note 23 at 141.

begins and ends at determined or determinable times, their services were lawfully terminated upon the completion of such project or phase thereof.[130]

Moreover, our examination of the records revealed other circumstances that convince us that respondents were and remained project-based employees, albeit repeatedly rehired. Contrary to their claim, respondents' employment were neither continuous and uninterrupted nor for a uniform period of one month; they were intermittent with varying durations, as well as gaps ranging from a few days to several weeks or months. These gaps coincide with the completion of a particular project and the start of a new specific and distinct project for which they were individually rehired. And for each completed project, petitioners submitted the required Establishment Employment Records to the DOLE which is a clear indicator of project employment.[131] The records also show that respondents' employment had never been extended beyond the completion of each project or phase thereof for which they had been engaged.

The project employment contract is not subject to a condition.

The CA likewise erred in holding that paragraph 10 of the employment contract allowing the extension of respondents' employment violates the second requisite of project employment that the completion or termination of such project or undertaking be determined at the time of engagement of the employee. It reads:

> 10 Ang kasunduang ito ay maaaring palawigin ng mas mahabang panahon na maaaring kailanganin para sa matagumpay na pagtatapos ng mga gawa o proyektong pinagkasunduan;[132]

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[130] *Dacles v. Millenium Erectors Corporation*, *supra* note 123 at 428-429.

[131] *Id*. at 430-431.

[132] Records, p. 27.

To our mind, paragraph 10 is in harmony with the agreement of the parties that respondents' employment is coterminous with the particular project stated in their contract. It was placed therein to ensure the successful completion of the specific work for which respondents were hired. Thus, in case of delay or where said work is not finished within the estimated date of completion, respondents' period of employment can be extended until it is completed. In which case, the duration and nature of their employment remains the same as previously determined in the project employment contract; it is still coterminous with the particular project for which they were fully apprised of at the time of their engagement.

As to the requirement that the completion or termination of the specific project or undertaking for which respondents were hired should be determined at the time of their engagement, we rule and so hold that it is enough that Herma Shipyard gave the approximate or target completion date in the project employment contract. Given the nature of its business and the scope of its projects which take months or even years to finish, we cannot expect Herma Shipyard to give a definite and exact completion date. It can only approximate or estimate the completion date. What is important is that the respondents were apprised at the time of their engagement that their employment is coterminous with the specific project and that should their employment be extended by virtue of paragraph 10 the purpose of the extension is only to complete the same specific project, and not to keep them employed even after the completion thereof. Put differently, paragraph 10 does not allow the parties to extend the period of respondents' employment after the completion of the specific project for which they were hired. Their employment can only be extended if that particular project, to which their employment depends, remains unfinished.

In sum, the CA erred in disregarding the project employment contracts and in concluding that respondents

have become regular employees because they were performing tasks necessary and desirable to the business of Herma Shipyard and were repeatedly rehired. The Labor Arbiter and the NLRC, which have expertise in their specific and specialized jurisdiction, did not err, much less commit grave abuse of discretion in holding that respondents were project-based employees. Their uniform conclusion is supported by substantial evidence and should, therefore, be accorded not only respect, but even finality.

WHEREFORE, the instant Petition for Review on *Certiorari* is **GRANTED**. The assailed Decision dated May 30, 2013 of the Court of Appeals in CA-G.R. SP No. 118068 is **REVERSED and SET ASIDE**. The May 24, 2010 Decision of the Labor Arbiter dismissing respondents' Complaint and affirmed by the National Labor Relations Commission in its Decision dated September 7, 2010 is **REINSTATED and AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 210251. April 17, 2017]

SECRETARY OF FINANCE CESAR V. PURISIMA and COMMISSIONER OF INTERNAL REVENUE KIM S. JACINTO-HENARES, *petitioners, vs.* **PHILIPPINE TOBACCO INSTITUTE, INC.,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC) AS AMENDED BY REPUBLIC ACT NO. (RA) 10351; THE

EXCISE TAX ON CIGARETTES PACKED BY MACHINE IS IMPOSED PER PACK WITH A MAXIMUM NUMBER OF 20 STICKS.— Section 145(C) of the NIRC is clear that the excise tax on cigarettes packed by machine is imposed per pack. "Per pack" was not given a clear definition by the NIRC. However, a "pack" would normally refer to a number of individual components packaged as a unit. Under the same provision, cigarette manufacturers are permitted to bundle cigarettes packed by machine in the maximum number of 20 sticks and aside from 20's, the law also allows packaging combinations of not more than 20's — it can be 4 pouches of 5 cigarette sticks in a pack (4 x 5's), 2 pouches of 10 cigarette sticks in a pack (2 x 10's), etc.

2. ID.; ID.; ID.; CERTAIN PORTIONS OF REVENUE REGULATIONS NO. (RR) 17-2012 AND REVENUE MEMORANDUM CIRCULAR NO. (RMC) 90-2012 CLEARLY CONTRAVENED THE PROVISIONS OF RA 10351; THESE REGULATIONS AMENDED RA 10351 BY CREATING ADDITIONAL TAX LIABILITY FOR PACKAGING COMBINATIONS SMALLER THAN 20 STICKS, HENCE, NULL AND VOID.— Section 11 of RR 17-2012 and Annex "D-1" on Cigarettes Packed by Machine of RMC 90-2012 clearly contravened the provisions of RA 10351. It is a well-settled principle that a revenue regulation cannot amend the law it seeks to implement. In *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, we held that a mere administrative issuance, like a BIR regulation, cannot amend the law; the former cannot purport to do any more than implement the latter. The courts will not countenance an administrative regulation that overrides the statute it seeks to implement. In the present case, a reading of Section 11 of RR 17-2012 and Annex "D-1" on Cigarettes Packed by Machine of RMC 90-2012 reveals that they are not simply regulations to implement RA 10351. They are amendatory provisions which require cigarette manufacturers to be liable to pay for more tax than the law, RA 10351, allows. The BIR, in issuing these revenue regulations, created an additional tax liability for packaging combinations smaller than 20 cigarette sticks. In so doing, the BIR amended the law, an act beyond the power of the BIR to do. In sum, we agree with the ruling of the RTC that Section 11 of RR 17-2012 and Annex "D-1" on Cigarettes Packed by Machine of RMC 90-2012 are null and void. Excise tax on cigarettes packed by machine shall be imposed on the packaging

combination of 20 cigarette sticks as a whole and not to individual packaging combinations or pouches of 5's, 10's, etc.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioners.
Romulo Mabanta Buenaventura Sayoc and Delos Angeles for respondent.

D E C I S I O N

CARPIO, *J.*:

This is a petition for review on certiorari[1] assailing the Decision[2] dated 7 October 2013 of the Regional Trial Court (RTC) of Las Piñas City, Branch 253 in SCA Case No. 13-0003. The RTC declared null and void certain portions of Revenue Regulations No. 17-2012[3] (RR 17-2012) and Revenue Memorandum Circular No. 90-2012[4] (RMC 90-2012) and ordered petitioners to cease and desist from implementing Section 11 of RR 17-2012 and RMC 90-2012 which refer to cigarettes packed by machine.

The Facts

On 20 December 2012, President Benigno S. Aquino III signed Republic Act No. 10351[5] (RA 10351), otherwise known as the

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[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 35-45. Penned by Presiding Judge Salvador V. Timbang, Jr.

[3] Prescribing the Implementing Guidelines on the Revised Tax Rates on Alcohol and Tobacco Products Pursuant to the Provisions of Republic Act No. 10351 and to Clarify Certain Provisions of Existing Revenue Regulations. Issued on 21 December 2012 by the Secretary of Finance.

[4] Revised Tax Rates of Alcohol and Tobacco Products under Republic Act No. 10351, "An Act Restructuring the Excise Tax on Alcohol and Tobacco Products by Amending Sections 141, 142, 143, 144, 145, 8, 131 and 288 of Republic Act No. 8424, otherwise known as The National Internal Revenue Code of 1997, as amended by Republic Act No. 9334, and for Other Purposes." Issued on 27 December 2012 by the Commissioner of Internal Revenue.

[5] An Act Restructuring the Excise Tax on Alcohol and Tobacco Products by Amending Sections 141, 142, 143, 144, 145, 8, 131 and 288 of Republic

Sin Tax Reform Law. RA 10351 restructured the excise tax on alcohol and tobacco products by amending pertinent provisions of Republic Act No. 8424,[6] known as the Tax Reform Act of 1997 or the National Internal Revenue Code of 1997 (NIRC).

Section 5 of RA 10351, which amended Section 145(C) of the NIRC, increased the excise tax rate of cigars and cigarettes and allowed cigarettes packed by machine to be packed in other packaging combinations of not more than 20. The relevant portions state:

> SEC. 5. Section 145 of the National Internal Revenue Code of 1997, as amended by Republic Act No. 9334, is hereby further amended to read as follows:
>
> SEC. 145. *Cigars and Cigarettes.* –
>
> x x x x x x x x x
>
> (C) *Cigarettes Packed by Machine.*– There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below:
>
> Effective on January 1, 2013
>
> (1) If the net retail price (excluding the excise tax and the value-added tax) is Eleven pesos and fifty centavos (₱11.50) and below per pack, the tax shall be Twelve pesos (₱12.00) per pack; and
>
> (2) If the net retail price (excluding the excise tax and the value-added tax) is more than Eleven pesos and fifty centavos (₱11.50) per pack, the tax shall be Twenty-five pesos (₱25.00) per pack.

Act No. 8424, otherwise known as the National Internal Revenue Code of 1997, as amended by Republic Act No. 9334, and for Other Purposes. Approved on 19 December 2012 and took effect on 21 December 2012.

[6] An Act Amending the National Internal Revenue Code, as Amended, and for Other Purposes. Cited as The Tax Reform Act of 1997, signed on 11 December 1997, and took effect on 1 January 1998.

Effective on January 1, 2014

(1) If the net retail price (excluding the excise tax and the value-added tax) is Eleven pesos and fifty centavos (₱11.50) and below per pack, the tax shall be Seventeen pesos (₱17.00) per pack; and

(2) If the net retail price (excluding the excise tax and the value-added tax) is more than Eleven pesos and fifty centavos (₱11.50) per pack, the tax shall be Twenty-seven pesos (₱27.00) per pack.

Effective on January 1, 2015

(1) If the net retail price (excluding the excise tax and the value-added tax) is Eleven pesos and fifty centavos (₱11.50) and below per pack, the tax shall be Twenty-one pesos (₱21.00) per pack; and

(2) If the net retail price (excluding the excise tax and the value-added tax) is more than Eleven pesos and fifty centavos (₱11.50) per pack, the tax shall be Twenty-eight pesos (₱28.00) per pack.

Effective on January 1, 2016

(1) If the net retail price (excluding the excise tax and the value-added tax) is Eleven pesos and fifty centavos (₱11.50) and below per pack, the tax shall be Twenty-five pesos (₱25.00) per pack; and

(2) If the net retail price (excluding the excise tax and the value-added tax) is more than Eleven pesos and fifty centavos (₱11.50) per pack, the tax shall be Twenty-nine pesos (₱29.00) per pack.

Effective on January 1, 2017, the tax on all cigarettes packed by machine shall be Thirty pesos (₱30.00) per pack.

The rates of tax imposed under this subsection shall be increased by four percent (4%) every year thereafter effective on January 1, 2018, through revenue regulations issued by the Secretary of Finance.

Duly registered cigarettes packed by machine shall only be packed in twenties and other packaging combinations of not more than twenty.

x x x x x x x x x

On 21 December 2012, the Secretary of Finance, upon the recommendation of the Commissioner of Internal Revenue (CIR), issued RR 17-2012. Section 11 of RR 17-2012 imposes an excise tax on individual cigarette pouches of 5's and 10's even if they are bundled or packed in packaging combinations not exceeding 20 cigarettes. The provision states:

> SEC. 11. Revised Provisions for the Manner of Packaging of Cigarettes. – All Cigarettes whether packed by hand or packed by machine shall only be packed in twenties (20s), and through other packaging combinations which shall result to not more than twenty sticks of cigarettes: *Provided*, That, in case of cigarettes packed in not more than twenty sticks, whether in 5 sticks, 10 sticks and other packaging combinations below 20 sticks, the net retail price of each individual package of 5s, 10s, etc. shall be the basis of imposing the tax rate prescribed under the Act.

Pursuant to Section 11 of RR 17-2012, the CIR issued RMC 90-2012 dated 27 December 2012. Annex "D-1" of RMC 90-2012 provides for the initial classifications in tabular form, effective 1 January 2013, of locally-manufactured cigarette brands packed by machine according to the tax rates prescribed under RA 10351 based on the (1) 2010 Bureau of Internal Revenue (BIR) price survey of these products, and (2) suggested net retail price declared in the latest sworn statement filed by the local manufacturer or importer. Some relevant portions provide:

Annex "D-1"

LIST OF LOCALLY MANUFACTURED CIGARETTE BRANDS AS OF DECEMBER 2012

1. List of brands Based on 2010 BIR Price Survey

BRAND NAMES	Content/Unit (pack)	Net Retail Price (Based on 2010 BIR Price Survey)	Applicable Excise Tax Rates Effective Jan.1, 2013 under R.A. No. 10351

A. Cigarettes Packed by Machine A.1. Net Retail Price (NRP) is Php 11.50 per Pack and below			
1. Astro Filter King	20 sticks/pack	10.92	12.00
x x x	x x x	x x x	
22. Fortune Int'l Extra Filter King	20 sticks/pack	10.84	12.00
23. Fortune Int'l Extra Filter King (10's)*	10 sticks/pack	6.58	12.00
x x x	x x x	x x x	
44. Marlboro Filter (2x10's) Flip Top*	10 sticks/pack	8.27	12.00
45. Marlboro Filter KS (5's)*	5 sticks/pouch	4.11	12.00
x x x	x x x	x x x	
61. Miller Filter Silver KS SP	20 sticks/pack	10.27	12.00
x x x	x x x	x x x	
63. Miller Filter Silver-(5's) KS Pouch*	5 sticks/pouch	2.88	12.00
x x x	x x x	x x x	
76. Philip Morris Menthol KS FTB-(10's)*	10 sticks/pack	6.25	12.00
77. Philip Morris Menthol-(5's) 100's Pouch*	5 sticks/pouch	3.84	12.00
x x x	x x x	x x x	

* NRP is converted into individual package of 5s or 10s pursuant to Section 11 of RR No. 17-2012

PMFTC, Inc., a member of respondent Philippine Tobacco Institute, Inc. (PTI), paid the excise taxes required under RA 10351, RR 17-2012, and RMC 90-2012 in order to withdraw cigarettes from its manufacturing facilities. However, on 16 January 2012, PMFTC wrote the CIR prior to the payment of the excise taxes stating that payment was being made under protest and without prejudice to its right to question said issuances through remedies available under the law.

As a consequence, on 26 February 2013, PTI filed a petition[7] for declaratory relief with an application for writ of

[7] Docketed as SCA Case No. 13-0003.

preliminaryinjunction with the RTC. PTI sought to have RR 17-2012 and RMC 90-2012 declared null and void for allegedly violating the Constitution and imposing tax rates not authorized by RA 10351. PTI stated that the excise tax rate of either ₱12 or ₱25 under RA 10351 should be imposed only on cigarettes packed by machine in packs of 20's or packaging combinations of 20's and should not be imposed on cigarette pouches of 5's and 10's.

In a Decision dated 7 October 2013, the RTC granted the petition for declaratory relief. The dispositive portion of the Decision states:

> WHEREFORE, premised on the foregoing, the Petition for Declaratory Relief is GRANTED. The assailed portions of Revenue Regulation 17-2012 and Revenue Memorandum Circular 90-2012 are declared NULL AND VOID and OF NO FORCE AND EFFECT. Respondents are to immediately cease and desist from implementing Sec. 11 of Revenue Regulation 17-2012 and Revenue Memorandum Circular 90-2012 insofar as the cigarettes packed by machine are concerned.
>
> The tax rates imposed by RA No. 10351 should be imposed on the whole packaging combination of 20's, regardless of whether they are packed by pouches of 2x10's or 4x5's, etc.
>
> SO ORDERED.[8]

Hence, the instant petition filed by the Secretary of Finance and the CIR through the Office of the Solicitor General.

Meanwhile, in a Resolution dated 9 June 2014, this Court issued a temporary restraining order against PTI and the RTC. The dispositive portion states:

> NOW, THEREFORE, effective immediately and continuing until further orders from this Court, You, the respondent, the RTC, Br. 253, Las Piñas City, their representatives, agents or other persons acting on their behalf are hereby RESTRAINED from enforcing the assailed Decision dated 7 October 2013 of the RTC, Br. 253, Las Piñas City in SCA Case No. 13-0003.
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> x x x x x x x x x[9]

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[8] *Rollo*, pp. 44-45.

[9] *Id*. at 200.

The Issue

Whether or not the RTC erred in nullifying Section 11 of RR 17-2012 and Annex "D-1" of RMC 90-2012 in imposing excise tax to packaging combinations of 5's, 10's, etc. not exceeding 20 cigarette sticks packed by machine.

The Court's Ruling

The petition lacks merit.

Petitioners contend that RA 10351 imposes the excise tax "per pack," regardless of the content or number of cigarette sticks of each pack. Thus, the RTC erred in ruling that RR 17-2012 and RMC 90-2012 have gone beyond the plain meaning of RA 10351. Petitioners assert that the two regulations merely clarify the tax rates set out in RA 10351 but have neither amended nor added any new taxes. Petitioners maintain that the excise tax rates imposed by RA 10351 on cigarettes packed by machine are based on the net retail price per pack. The pack, therefore, is the unit on which the tax rates are imposed and is understood to be the packaging unit that reaches the ultimate consumer. Each pack of 5, 10, or 20 cigarettes is meant to be sold at retail individually. On the other hand, bundles of smaller packs resulting in 20 cigarettes are meant to be sold wholesale. Thus, petitioners insist that the excise tax imposable on a bundle of 20 is computed on the net retail price of each individual pack or pouch of the bundle and not on the bundle as one unit.

PTI, on the other hand, contends that RA 10351 allows a cigarette manufacturer to adopt packaging combinations, such as the bundling of four pouches with five sticks per pack (4 x 5's), or two pouches of ten sticks per pack (2 x 10's), provided that such packaging combination does not exceed 20 sticks. Thus, individual cigarette pouches of 5's and 10's bundled together into a single packaging of not more than 20 sticks are considered as one pack and should be subjected to excise tax only once. Otherwise, a cigarette pouch of 5's, for example, will be subjected to an excise tax of ₱48.00 since the BIR will impose an individual excise tax of ₱12.00 upon each and every pouch of 5's. While the same brand in a pack of 20's will only be subjected to an excise tax rate of ₱12.00. Thus, PTI maintains that Section 11 of RR 17-2012 and Annex "D-1"

pertaining to Cigarettes Packed by Machine of RMC 90-2012 disregarded the clear provision of RA 10351 and imposed excise tax on each cigarette pouches of 5's and 10's regardless of whether they are packed together into 20 sticks per pack. As a result, the affected cigarette brands that should have been taxed only either ₱12.00 or ₱25.00 per pack are subjected to a different and higher excise tax rate not provided in RA 10351. Further, PTI asserts that petitioners did not publish or circulate notices of the then proposed RR 17-2012 or conduct a hearing to afford interested parties the opportunity to submit their views prior to the issuance of RR 17-2012 which deprived it of its due process rights.

The pertinent portions of Section 145(C) of the NIRC, as amended by Section 5 of RA 10351, state:

> SEC. 5. Section 145 of the National Internal Revenue Code of 1997, as amended by Republic Act No. 9334, is hereby further amended to read as follows:
>
> SEC. 145. *Cigars and Cigarettes.* –
>
> x x x x
>
> (C) *Cigarettes Packed by Machine.*– There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below:
>
> Effective on January 1, 2013
>
> (1) If the net retail price (excluding the excise tax and the value-added tax) is Eleven pesos and fifty centavos (₱11.50) and below per pack, t**he tax shall be Twelve pesos (₱12.00) per pack**; and
>
> (2) If the net retail price (excluding the excise tax and the value-added tax) is more than Eleven pesos and fifty centavos (₱11.50) per pack, **the tax shall be Twenty-five pesos (₱25.00) per pack**.
>
> x x x x x x x x x
>
> **Duly registered cigarettes packed by machine shall only be packed in twenties and other packaging combinations of not more than twenty**.

x x x x x x x x x (Emphasis supplied)

Section 145(C) of the NIRC is clear that the excise tax on cigarettes packed by machine is imposed per pack. "Per pack" was not given a clear definition by the NIRC. However, a "pack" would normally refer to a number of individual components packaged as a unit.[10] Under the same provision, cigarette manufacturers are permitted to bundle cigarettes packed by machine in the maximum number of 20 sticks and aside from 20's, the law also allows packaging combinations of not more than 20's – it can be 4 pouches of 5 cigarette sticks in a pack (4x5's), 2 pouches of 10 cigarette sticks in a pack (2x10's), etc.

Based on this maximum packaging and allowable combinations, the BIR, with RA 10351 as basis, issued RR 17-2012. Section 11 of RR 17-2012, which provides for the manner of packaging cigarettes, states:

> SEC. 11. Revised Provisions for the Manner of Packaging of Cigarettes. – All Cigarettes whether packed by hand or packed by machine shall only be packed in twenties (20s), and through other packaging combinations which shall result to not more than twenty sticks of cigarettes: *Provided*, That, **in case of cigarettes packed in not more than twenty sticks, whether in 5 sticks, 10 sticks and other packaging combinations below 20 sticks, the net retail price of each individual package of 5s, 10s, etc. shall be the basis of imposing the tax rate** prescribed under the Act. (Emphasis supplied)

The BIR also released RMC 90-2012, specifically Annex "D-1" on Cigarettes Packed by Machine, in accordance with RA 10351 and RR 17-2012, showing in tabular form the different brands of locally-manufactured cigarettes packed by machine with the brand names, content/unit (pack), net retail price, and the applicable excise tax rates effective 1 January 2013. The net retail price of some brand names was converted into individual packages of 5's or 10's pursuant to Section 11 of RR 17-2012.

The RTC, in its Decision dated 7 October 2013, ruled in favor of PTI and declared that RA 10351 intends to tax the packs of

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[10] Merriam Webster Dictionary<https://www.merriam-webster.com/dictionary/pack> (visited on 12 April 2017).

20's as a whole, regardless of whether they are further repacked by 10's or 5's, as long as they total 20 sticks in all. Thus, the tax rate to be imposed shall only be either for a net retail price of (1) less than ₱11.50, or (2) more than ₱11.50, applying the two excise tax rates from 2013 until 2016 as mentioned under RA 10351. The RTC added "that the fact the law allows 'packaging combinations,' as long as they will not exceed a total of 20 sticks, is indicative of the lawmakers' foresight that these combinations shall be sold at retail individually. Yet, the lawmakers did not specify in the law that the tax rate shall be imposed on each packaging combination." Thus, the RTC concluded that the interpretation made by the Secretary of Finance and the CIR has no basis in the law.

We agree.

In the laws preceding RA 10351 – RA 8240[11] and RA 9334,[12] both amendments to the excise tax rates provisions of the NIRC dealing with cigarettes packed by machine, which took effect in 1997 and 2005, respectively, provided that all "duly registered or existing brands of cigarettes or new brands thereof packed by machine shall only be packed in twenties."

The confusion set in when RA 10351 amended the NIRC once again in 2012 and introduced packaging combinations to cigarettes packed by machine, providing that "duly registered cigarettes packed by machine shall only be packed in twenties **and other packaging combinations of not more than twenty.**"

Thereafter, RR 17-2012 followed, where the BIR, in Section 11, reiterated the provision in the NIRC that cigarettes shall only be packed in 20's and in other packaging combinations which shall not exceed 20 sticks. However, the BIR added "x x x **That, in case of cigarettes packed in not more than twenty sticks,**

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[11] An Act Amending Sections 138, 140, & 142 of the National Internal Revenue Code, as amended, and for Other Purposes. Took effect on 1 January 1997.

[12] An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose Sections 131, 141, 142, 143, 144, 145 and 288 of the National Internal Revenue Code of 1997, as amended. Took effect on 1 January 2005.

whether in 5 sticks, 10 sticks and other packaging combinations below 20 sticks, the net retail price of each individual package of 5s, 10s, etc. shall be the basis of imposing the tax rate x x x."

The basis of RR 17-2012 is RA 10351. RA 10351, in amending Section 145(C) of the NIRC provided that "duly registered cigarettes packed by machine shall only be packed in twenties and other packaging combinations of not more than twenty." However, nowhere is it mentioned that the other packaging combinations of not more than 20 will be imposed individual tax rates based on its different packages of 5's, 10's, etc. In such a case, a cigarette pack of 20's will only be subjected to an excise tax rate of ₱12.00 per pack as opposed to packaging combinations of 5's or 10's which will be subjected to a higher excise tax rate of ₱24.00 for 10's and ₱48.00 for 5's.

During the Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 3299 and House Bill No. 5727 dealing with the Sin Tax bills of the 15th Congress, before these bills were enacted into RA 10351, our lawmakers and Kim S. Jacinto-Henares, the CIR at the time, deliberated on the packaging of cigarettes. The relevant excerpts state:

Rep. Villafuerte: Just a point of clarification. The Senate says, 'twenties.' Okay, that's very reasonable. But can two packs put together in tens, is that prohibited? Because in rural areas, they don't necessarily have to sell.

The Chairman (Sen. Drilon): Can we ask our resource person, Congressman?

Ms. Jacinto-Henares: No, sir, as long as they take the two ten packs together or four, five packs together, that is considered twenty.

Rep. Villafuerte: Okay. As long as the twenty packs is paid even if they are separable in packaging for retail purposes, that's allowed. Because I got the impression from some people that that is being prohibited that's why I sought to clarify.

The Chairman (Sen. Drilon): On record, yes.

x x x x x x x x x

Sen. Recto: But you could have five, five, five, five and put a tape.

Ms. Jacinto-Henares: Yeah. But it should be taped together.

Sen. Recto: Okay.

Sen. P. Cayetano: Can I ask a question about that? When you say that you can have numbers divisible, I guess, by five, so you have five, 10, 15, 20, right? So you can have two or four packaged together for tax purposes. And then for retail purposes, you can divide that up. Is that what we're saying?

x x x x x x x x x

Ms. Jacinto-Henares: Yes.

x x x x x x x x x

Sen. A. Cayetano: Mr. Chair. Mr. Chair. The point is, we're taxing by pack. If they sell less than 20, that's advantageous to the government. So, if they want to pack it by 10 but not combine it, we will tax them twice. So, it's good for the government. But if you allow combinations without limiting it to 20, they will pack three of 10s together and you will be taxing 30s and the government will be getting less. So it's an irony that our problem now with the sin tax is our sin tax.

So, can I propose this wording, 'In twenties and other packaging combinations not more than 20' or not more than 20 or not more than 20 sticks.

Ms. Jacinto-Henares: Yes, sir.[13]

From the above discussion, it can be gleaned that the lawmakers intended to impose the excise tax on every pack of cigarettes that come in 20 sticks. Individual pouches or packaging combinations of 5's and 10's for retail purposes are allowed and will be subjected to the same excise tax rate as long as they are bundled together by not more than 20 sticks. Thus, by issuing Section 11 of RR 17-2012 and Annex "D-1" on Cigarettes Packed by Machine of RMC 90-2012, the BIR went beyond the express provisions of RA 10351.

It is an elementary rule in administrative law that administrative rules and regulations enacted by administrative bodies to implement the law which they are entrusted to enforce have the force of law

[13] *Rollo*, pp. 260-261.

and are entitled to great weight and respect. However, these implementations of the law must not override, supplant, or modify the law but must remain consistent with the law they intend to implement. It is only Congress which has the power to repeal or amend the law.

In this case, Section 11 of RR 17-2012 and Annex "D-1" on Cigarettes Packed by Machine of RMC 90-2012 clearly contravened the provisions of RA 10351. It is a well-settled principle that a revenue regulation cannot amend the law it seeks to implement. In *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*,[14] we held that a mere administrative issuance, like a BIR regulation, cannot amend the law; the former cannot purport to do any more than implement the latter. The courts will not countenance an administrative regulation that overrides the statute it seeks to implement.

In the present case, a reading of Section 11 of RR 17-2012 and Annex "D-1" on Cigarettes Packed by Machine of RMC 90-2012 reveals that they are not simply regulations to implement RA 10351. They are amendatory provisions which require cigarette manufacturers to be liable to pay for more tax than the law, RA 10351, allows. The BIR, in issuing these revenue regulations, created an additional tax liability for packaging combinations smaller than 20 cigarette sticks. In so doing, the BIR amended the law, an act beyond the power of the BIR to do.

In sum, we agree with the ruling of the RTC that Section 11 of RR 17-2012 and Annex "D-1" on Cigarettes Packed by Machine of RMC 90-2012 are null and void. Excise tax on cigarettes packed by machine shall be imposed on the packaging combination of 20 cigarette sticks as a whole and not to individual packaging combinations or pouches of 5's, 10's, etc.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Decision dated 7 October 2013 of the Regional Trial Court of Las Piñas City, Branch 253 in SCA Case No. 13-0003.

SO ORDERED.

Peralta, Mendoza, Leonen, and *Martires, JJ.,* concur.

[14] 491 Phil. 317, 347 (2005).

THIRD DIVISION

[G.R. No. 211287. April 17, 2017]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **WEST BAY COLLEGES, INC., PBR MANAGEMENT AND DEVELOPMENT CORPORATION and BCP TRADING CO., INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RULE 45 PETITION; ONLY QUESTIONS OF LAW MAYBE RAISED; EXCEPTIONS ENUMERATED AND APPLIED; THE CONFLICTING PRONOUNCEMENTS OF THE REGIONAL TRIAL COURT AND THE COURT OF APPEALS NECESSITATES A REVIEW OF THEIR FACTUAL FINDINGS.— It should be noted at the outset that under Rule 45 of the 1997 Rules of Civil Procedure, only questions of law may be raised by the parties and passed upon by the Court. The Court is not a trier of facts and is not duty bound to analyze and weigh again the evidence considered in the proceedings below. This rule, however, admits of certain exceptions: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the CA is based on misapprehension of facts; **(5) when the findings of fact are conflicting;** (6) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of fact are conclusions without citation of specific evidence on which they are based; (8) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (9) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record. In the instant case, the RTC and the CA have conflicting pronouncements, which necessitates a review of their factual findings.

2. CIVIL LAW; CIVIL CODE; LOANS; WHEN THERE WAS NO SHOWING THAT PETITIONER BANK APPLIED THE INSURANCE PROCEEDS TO THE OUTSTANDING BALANCES OF RESPONDENTS' LOANS, ORDERING THE REIMBURSEMENT OF THE INSURANCE PROCEEDS PREVIOUSLY RECEIVED BY PETITIONER WAS PROPER.— After a judicious review of the records, the Court finds that there is no reversible error on the part of the CA in ordering the reimbursement of ₱21,980,000.00 which is the amount of the insurance proceeds previously received by Land Bank. As the CA pointed out, despite several amendments to the rehabilitation plan which repeatedly provided for the application of the insurance proceeds to the debts of West Bay, then to PBR and BCP, there is no showing that Land Bank applied the amount thereof to the aforementioned loans. The Court is inclined to uphold this finding – for if Land Bank had in fact deducted the amount of the insurance proceeds from the loan obligations of either West Bay or PBR and BCP, this information would have reflected on the rehabilitation plans of the CGC. In other words, if the insurance proceeds were indeed applied to West Bay's and PBR's account in January and June 2002 as Land Bank espoused, then ₱21,980,000.00 should have been subtracted from the obligations of the said companies. Verily, Land Bank negated its own claim when it failed to present evidence of reduction in the outstanding balances of the respondents, whether singly or collectively.

3. ID.; ID.; ID.; ID.; THE COURT DEEMS IT PROPER TO IMPOSE INTEREST ON THE AMOUNT OF INSURANCE PROCEEDS IN THE CONCEPT OF ACTUAL AND COMPENSATORY DAMAGES.— [T]he Court deems it proper to impose interest on the amount of the insurance proceeds in the concept of actual and compensatory damages. Article 2209 of the Civil Code provides that if the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent (6%) *per annum.* x x x Since the obligation of Land Bank to

reimburse the amount of insurance proceeds does not constitute a forbearance of money, the interest rate of six percent (6%) is applicable. The pronouncement of the Court in *Sunga-Chan, et al. v. CA, et al.* on this matter is enlightening: **For transactions involving payment of indemnities in the concept of damages arising from default in the performance of obligations in general** and/or for money judgment not involving a loan or forbearance of money, goods, or credit, **the governing provision is Article. 2209 of the Civil Code prescribing a yearly six percent (6%) interest.**

APPEARANCES OF COUNSEL

LBP Legal Services Group for Land Bank of the Philippines.
Harold N.W. Alcantara for respondents.

R E S O L U T I O N

REYES, *J.*:

This resolves a petition for review on *certiorari*[1] filed by Land Bank of the Philippines (Land Bank), assailing the Decision[2] dated September 30, 2013 and Resolution[3] dated February 10, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 127897.

Facts

West Bay Colleges, Inc. (West Bay) is a domestic corporation engaged in the operation of an educational institution; while PBR Management and Development Corporation (PBR) and BCP Trading Company, Inc. (BCP) are domestic corporations engaged in the business of real estate and construction,

[1] *Rollo,* pp. 8-38.

[2] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Marlene Gonzales-Sison and Edwin D. Sorongon concurring; *id.* at 40-50.

[3] *Id.* at 53-54.

respectively. Together, West Bay, PBR and BCP form the Chiongbian Group of Companies (CGC) (respondents).[4]

In June 1996, West Bay applied for an interim financing with Land Bank for the construction of a school building, which was approved in the amount of ₱125 Million. On December 22, 1997, PBR availed of a ₱100-Million Term Loan from Land Bank for the construction of condominium buildings.[5]

On January 22, 1998, West Bay, as an accommodation mortgagor, executed a Real and Chattel Mortgage over its training vessel to secure the loan of PBR with Land Bank. The vessel was insured with First Lepanto Taisho Insurance Corporation in the amount of ₱26 Million, representing the mortgagee Land Bank's insurable interest in the vessel.[6]

On November 3, 2000, the mortgaged vessel sank during the typhoon *Seniang*.[7] By agreement of the parties, insurance proceeds in the amount of ₱21,980,000.00 net of shared expenses were released to Land Bank on account of PBR's loan.[8]

To resolve its financial difficulties, West Bay proposed a restructuring of its debts with Land Bank, which the latter accepted through a letter[9] dated March 25, 2002.[10] It was provided therein that Land Bank will reimburse West Bay with the insurance proceeds that it had previously received. Subsequently, on May 10, 2002, West Bay and PBR executed their respective Restructuring Agreements[11] with Land Bank.

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[4] *Id*. at 41, 84.

[5] *Id*. at 10.

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

[7] *Id*. at 11.

[8] *Id*. at 11, 42.

[9] *Id*. at 205-207.

[10] *Id*. at 12.

[11] *Id*. at 208-214; 215-219.

But on June 28, 2002, the respondents filed a petition for corporate rehabilitation with a prayer for suspension of payments before the Regional Trial Court (RTC) of Muntinlupa City.[12]The RTC Branch 256 issued a Stay Order[13] dated July 10, 2002 directing, among others, a stay in the enforcement of all claims against West Bay, its guarantors and sureties not solidarily liable with it, particularly, PBR and BCP.[14]

The RTC approved the rehabilitation plan on September 10, 2002 which provided, *inter alia,* that the ₱21,980,000.00 insurance proceeds received by Land Bank shall instead be applied to the loan of West Bay.[15]

On January 31, 2003, the respondents filed an amended rehabilitation plan transferring the application of the insurance proceeds from West Bay to PBR and BCP's obligations.[16]

In the subsequent years, the rehabilitation plan underwent several amendments which were approved by the RTC on the following dates: November 17, 2003, June 7, 2004, March 29, 2006 and September 1, 2008.[17] The updated Rehabilitation Plans consistently provided for the application of the ₱21,980,000.00 insurance proceeds to the loan accounts of PBR and BCP.[18]

While the rehabilitation proceedings were pending, Land Bank filed a motion to be substituted by Philippine Distressed

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[12] *Id*. at 14.

[13] Issued by Presiding Judge Alberto L. Lerma; *id*. at 80-82.

[14] *Id*. at 80.

[15] *Id*. at 15.

[16] *Id*. at 42.

[17] *Id*. at 408-410. The Rehabilitation Plan approved by the RTC on September 1, 2008 was annulled by the CA in its Decision dated April 28, 2011 (*id*. at 115-127) due to some objectionable provisions therein regarding West Bay's assumption of the personal obligations of PBR's stockholders.

[18] *Id*. at 410.

Asset Asia Pacific (PDAAP), a special purpose vehicle. The motion was granted by the RTC in its Order[19] dated November 5, 2010.[20]

In November 2011, the respondents filed an Amended Rehabilitation Plan, indicating that PDAAP did not agree to the application of ₱21,980,000.00 insurance proceeds to the outstanding obligations of PBR.[21]

On March 13, 2012, West Bay filed an Urgent Motion[22] with the RTC praying for the issuance of an order directing Land Bank to reimburse to it the amount of ₱21,980,000.00 representing the insurance proceeds. West Bay reasoned that the reimbursement was provided for in the restructuring plan previously approved by Land Bank in the letter dated March 25, 2002 but was not complied with. It alleged that although the RTC approved the rehabilitation plans authorizing the application of the insurance proceeds to the obligations of West Bay, it was never implemented.

In its Comment/Opposition,[23] Land Bank explained that the insurance proceeds were applied (value-dated) in January and June 2002 to West Bay's and PBR's outstanding loan obligation as follows:

a. For payment of documentary stamp tax (DST) on the restructuring of the account of [West Bay] and [PBR] in the amount of ₱651,277.00; and

b. In partial settlement of the loan of PBR under Promissory Notes Nos. P&C-2841 in the total amount of ₱21,328,723.00.[24]

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[19] *Id*. at 129.

[20] *Id*. at 15-16.

[21] *Id*. at 17.

[22] *Id*. at 190-194.

[23] *Id*. at 197-204.

[24] *Id*. at 198.

Land Bank averred that it was prompted to apply the insurance proceeds to West Bay's and PBR's outstanding loans due to West Bay's failure to comply with the terms and conditions of the Restructuring Agreement dated May 10, 2002, as well as the filing of the petition for corporate rehabilitation. Further, Land Bank claimed that it sold all its rights, credits and receivables relative to the West Bay and PBR accounts to PDAAP, net of the insurance proceeds.[25]

Ruling of the RTC

In the assailed Order[26] dated August 31, 2012, the RTC denied the Urgent Motion as it found no justifiable reason for the reimbursement of the insurance proceeds to West Bay. It also observed that West Bay did not comply with the terms and conditions of the restructuring agreement. Finally, PBR signed promissory notes which stated that, "[t]he Borrower hereby authorizes and empowers the Bank, without need of notice to the Borrower, and irrespective of the date of maturity, to deduct, set-off and apply any funds, securities or assets of the Borrower with the Bank or any of its branches, on deposit or otherwise, in reduction of amounts due under this Note."[27]

On December 18, 2012, the respondents filed a petition for *certiorari* and mandamus with the CA, challenging the RTC Order dated August 31, 2012.[28]

Ruling of the CA

On September 30, 2013, the CA promulgated a Decision,[29] setting aside the RTC order. Per the CA's findings, Land Bank did not apply the insurance proceeds to the remaining obligations of West Bay, PBR or BCP as there was no statement of the

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[25] *Id*. at 200.

[26] Issued by Presiding Judge Leandro C. Catalo; *id*. at 51-52.

[27] *Id*. at 51.

[28] *Id*. at 412.

[29] *Id*. at 40-50.

settlement of the insurance proceeds in the context of the restructured loan. Granting that West Bay and PBR failed to comply with the requirements of the restructured loan, it was because they were prohibited from paying any of their outstanding liabilities when the Stay Order took effect.[30] The dispositive portion of the decision reads:

> **WHEREFORE,** the petition is **GRANTED**. The Order dated August 31, 2012 of the Rehabilitation Court is **ANNULLED and SET ASIDE**. The Rehabilitation Court is **ORDERED to DIRECT** the [Land Bank] to **REIMBURSE** the ₱21,980,000.00 insurance proceeds, plus interest, to [West Bay].
>
> **SO ORDERED.**[31]

Land Bank filed a motion for reconsideration, which the CA denied in its Resolution[32] dated February 10, 2014.

Undeterred, Land Bank filed the present petition for review on *certiorari,* raising the following issues:

> A. WHETHER WEST BAY IS ENTITLED TO THE REIMBURSEMENT OF THE ₱21,980,000.00 INSURANCE PROCEEDS; and
>
> B. WHETHER THE RIGHT OF WEST BAY TO BE REIMBURSED WITH THE ₱21,980,000.00 INSURANCE PROCEEDS HAS BEEN CLEARLY AND FULLY ESTABLISHED IN THE MODIFIED REHABILITATION PLAN SO AS TO BE COMPELLABLE BY MANDAMUS.[33]

Ruling of the Court

The Court denies giving due course to the petition for failure of Land Bank to show any reversible error in the assailed decision as to warrant the exercise of the Court's discretionary appellate jurisdiction.

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[30] *Id*. at 47-48.

[31] *Id*. at 49.

[32] *Id*. at 53-54.

[33] *Id*. at 20.

It should be noted at the outset that under Rule 45 of the 1997 Rules of Civil Procedure, only questions of law may be raised by the parties and passed upon by the Court. The Court is not a trier of facts and is not duty bound to analyze and weigh again the evidence considered in the proceedings below.[34] This rule, however, admits of certain exceptions:

> (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the CA is based on misapprehension of facts; **(5) when the findings of fact are conflicting;** (6) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of fact are conclusions without citation of specific evidence on which they are based; (8) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (9) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.[35] (Citation omitted and emphasis ours)

In the instant case, the RTC and the CA have conflicting pronouncements, which necessitates a review of their factual findings.

After a judicious review of the records, the Court finds that there is no reversible error on the part of the CA in ordering the reimbursement of ₱21,980,000.00 which is the amount of the insurance proceeds previously received by Land Bank.

As the CA pointed out, despite several amendments to the rehabilitation plan which repeatedly provided for the application of the insurance proceeds to the debts of West Bay, then to PBR and BCP, there is no showing that Land Bank applied the amount thereof to the aforementioned loans.[36] The Court is inclined to uphold this finding – for if Land Bank had in fact deducted the amount of the insurance proceeds from the loan obligations of

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[34] *Benedicto v. Villaflores,* 646 Phil. 733, 739 (2010).

[35] *Safeguard Security Agency, Inc. v. Tangco,* 540 Phil. 86, 103 (2006).

[36] *Rollo,* p. 47.

either West Bay or PBR and BCP, this information would have reflected on the rehabilitation plans of the CGC. In other words, if the insurance proceeds were indeed applied to West Bay's and PBR's account in January and June 2002 as Land Bank espoused, then ₱21,980,000.00 should have been subtracted from the obligations of the said companies. Verily, Land Bank negated its own claim when it failed to present evidence of reduction in the outstanding balances of the respondents, whether singly or collectively.

Also, a belated application of the insurance proceeds to the obligations of West Bay or PBR and BCP would violate the Stay Order dated July 10, 2002 issued by the RTC. Section 6 of Rule 4 of the 2000 Interim Rules of Procedure on Corporate Rehabilitation, which was in force at the time of the filing of the petition for corporate rehabilitation, provides:

> SEC. 6. *Stay Order.* - If the court finds the petition to be sufficient in form and substance, it shall, not later than five (5) days from the filing of the petition, issue an Order (a) appointing a Rehabilitation Receiver and fixing his bond; (b) staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor; (c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business; **(d) prohibiting the debtor from making any payment of its liabilities outstanding as at the date of filing of the petition;** (e) prohibiting the debtor's suppliers of goods or services from withholding supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services and goods supplied after the issuance of the stay order; (f) directing the payment in full of all administrative expenses incurred after the issuance of the stay order; (g) fixing the initial hearing on the petition not earlier than forty-five (45) days but not later than sixty (60) days from the filing thereof; (h) directing the petitioner to publish the Order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks; (i) directing all creditors and all interested parties (including the Securities and Exchange Commission) to file and serve on the debtor a verified comment on or opposition to the petition, with supporting affidavits and documents, not later than ten (10) days before the date of the

initial hearing and putting them on notice that their failure to do so will bar them from participating in the proceedings; and (j) directing the creditors and interested parties to secure from the court copies of the petition and its annexes within such time as to enable themselves to file their comment on or opposition to the petition and to prepare for the initial hearing of the petition.

Lastly, the Court deems it proper to impose interest on the amount of the insurance proceeds in the concept of actual and compensatory damages. Article 2209 of the Civil Code provides that if the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent (6%) *per annum.*

In the case of loans or forbearances of money, the rate of legal interest used to be twelve percent (12%) *per annum* pursuant to Central Bank Circular No. 905-82, which took effect on January 1, 1983.[37] "The term 'forbearance', within the context of usury law, has been described as a contractual obligation of a lender or creditor to refrain, during a given period of time, from requiring the borrower or debtor to repay the loan or debt then due and payable."[38]

But effective on July 1, 2013, under Bangko Sentral ng Pilipinas Monetary Board Circular No. 799, the rate of interest is now back at six percent (6%) *per annum* for the loan or forbearance of any money, goods or credits and in judgments, in the absence of an express contract as to such rate of interest.[39] In view of this amendment, the Court, in *Nacar v. Gallery Frames, et al.,*[40] modified the guidelines laid down in *Eastern Shipping Lines, Inc. v. Court of Appeals,*[41] as follows:

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[37] *Planters Development Bank v. Spouses Lopez,* 720 Phil. 426, 447 (2013).

[38] *Sunga-Chan, et al. v. CA, et al.,* 578 Phil. 262, 276 (2008).

[39] *S.C. Megaworld Construction and Development Corporation v. Engr. Parada,* 717 Phil. 752, 773 (2013).

[40] 716 Phil. 267 (2013).

[41] 304 Phil. 236 (1994).

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.,* a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% *per annum* to be computed from default, *i.e.,* from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, **not** constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed **at the discretion of the court** at the rate of 6% *per annum.* No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[42] (Emphasis ours)

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[42] *Nacar v. Gallery Frames, et al., supra* note 40, at 282-283.

Since the obligation of Land Bank to reimburse the amount of insurance proceeds does not constitute a forbearance of money, the interest rate of six percent (6%) is applicable. The pronouncement of the Court in *Sunga-Chan, et al. v. CA, et al.,*[43] on this matter is enlightening: **For transactions involving payment of indemnities in the concept of damages arising from default in the performance of obligations in general** and/or for money judgment not involving a loan or forbearance of money, goods, or credit, **the governing provision is Article. 2209 of the Civil Code prescribing a yearly six percent (6%) interest.**[44]

As to the reckoning period for the commencement of the running of the legal interest, it shall be subject to the condition "that the courts are vested with discretion, depending on the equities of each case, on the award of interest."[45] Applying the guidelines in *Nacar,* another six percent (6%) interest shall be imposed from the finality of this Resolution until its satisfaction as the interim period, is considered to be, by then, equivalent to a forbearance of credit.

WHEREFORE, the petition is **DENIED.** The Decision dated September 30, 2013 and Resolution dated February 10, 2014 of the Court of Appeals in CA-G.R. SP No. 127897 are **AFFIRMED.** The Land Bank of the Philippines is **DIRECTED** to reimburse West Bay Colleges, Inc. the amount of ₱21,980,000.00 representing the insurance proceeds plus six percent (6%) interest thereon from the issuance of the Stay Order on July 10, 2002 up to the date of finality of this Resolution by way of actual or compensatory damages. From finality until full satisfaction, the total amount due now compounded with interest due from July 10, 2002 up to finality, shall likewise earn interest at six percent (6%) *per annum* until fully paid.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Jardeleza,* and *Tijam, JJ.,* concur.

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[43] 578 Phil. 262 (2008).

[44] *Id*. at 276.

[45] *Id*. at 277.

SECOND DIVISION

[G.R. No. 217004. April 17, 2017]

RAMON R. VILLARAMA, *petitioner, vs.* **ATTY. CLODUALDO C. DE JESUS,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; ATTORNEY'S FEES; EVERY ATTORNEY IS ENTITLED TO RECEIVE REASONABLE COMPENSATION FOR SERVICES PERFORMED PURSUANT TO A VALID AGREEMENT; IN THE ABSENCE OF AN AGREEMENT, THE COMPENSATION SHALL BE BASED ON *QUANTUM MERUIT*; *QUANTUM MERUIT,* DEFINED.— [T]his Court finds that Atty. De Jesus, as well as every attorney, is entitled to have and receive a just and reasonable compensation for services performed at the special instance and request of his client. Once the attorney has performed the task assigned to him in a valid agreement, his compensation is determined on the basis of what he and the client agreed. In the absence of the written agreement, the lawyer's compensation shall be based on *quantum meruit*, which means "as much as he deserved." The determination of attorney's fees on the basis of *quantum meruit* is also authorized "**when the counsel, for justifiable cause, was not able to finish the case to its conclusion**." Moreover, *quantum meruit* becomes the basis of recovery of compensation by the attorney where the circumstances of the engagement indicate that it will be contrary to the parties' expectation to deprive the attorney of all compensation. In this case, since respondent was not able to fulfill one of the conditions provident in the Contract for Legal Services, his attorney's fees shall be based on *quantum meruit*. *Quantum meruit*– literally meaning as much as he deserves – is used as basis for determining an attorney's professional fees in the absence of an express agreement. The recovery of attorney's fees on the basis of *quantum meruit* is a device that prevents an unscrupulous client from running away with the fruits of the legal services of counsel without paying for it and also avoids unjust enrichment on the part of the attorney himself. An attorney must show that he is

entitled to reasonable compensation for the effort in pursuing the client's cause, taking into account certain factors in fixing the amount of legal fees.

2. ID.; ID.; ID.; WHERE THE PAYMENT OF ATTORNEY'S FEES IS DEPENDENT ON THE FULFILLMENT OF TWO CONDITIONS, ONE OF WHICH IS NOT YET FULFILLED, THE LAWYER IS ENTITLED TO THE EXTENT OF 50% OF THE SUCCESS FEE STIPULATED IN THE CONTRACT.— The payment of the success fee, as contained in the Contract for Legal Services, is dependent on the fulfillment of two conditions, namely: 1) petitioner retaining possession of the subject property, and 2) the property being titled under the name of petitioner. Clearly, this falls under a contingent fee contract. x x x [I]t is beyond dispute that the first condition stipulated in the Contract for Legal Services, through the services of Atty. De Jesus, petitioner was able to retain possession of the subject property. The second condition, the transfer of title of the property under the name of petitioner, however, is yet to be fulfilled. x x x There is no legal impossibility in the fulfillment of the second condition. There is still a remedy upon which petitioner may be able to transfer the title of the subject property under his name. In fact, respondent admitted in his Comment that there was no legal impossibility and that the only hindrance was the refusal of petitioner to pay Prudential Bank the value of the 30% equity of the property in the amount of ₱1,325,000.00. Although petitioner insists that it has already taken steps in offering Prudential Bank an amount to settle the issue, this still negates the finding of the CA that it is legally impossible for petitioner to transfer the title of the property under his name. x x x Based on the considerations set forth in Rule 20.01 of the *Code of Professional Responsibility,* this Court rules that the CA was correct in its determination that Atty. De Jesus is entitled to the extent of 50% of the Php1,000,000.00 success fee stipulated in the contract.

APPEARANCES OF COUNSEL

Delos Angeles Aguirre Olaguer & Sto. Domingo Law Offices for petitioner.

De Jesus & Associates for respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated, April 20, 2015, of petitioner Ramon R. Villarama that seeks to reverse and set aside the Decision[1] dated March 31, 2014 and the Resolution[2] dated February 18, 2015 of the Court of Appeals (*CA*) reversing the Decision[3] dated May 25, 2011 of the Regional Trial Court (*RTC*), Branch 100, Quezon City in a case for collection of sum of money with damages.

The facts follow.

Respondent Atty. Clodualdo De Jesus (*Atty. De Jesus*) and petitioner, sometime in October 1996, entered into a contract denominated as "Contract for Legal Services" and "Professional Fees" wherein it was agreed upon that Atty. De Jesus shall render legal services for petitioner in order for the latter to take full possession of a property located at No. 19 Jose Escaler St., Loyola Heights, Quezon City and the titling of the same property under petitioner's name; thus, under the heading, "Scope of Legal Work," it reads:

> 1.1 The main objective in this case is to see to it that the property involved in this case (a parcel of land located at #19 Jose Escaler St., Loyola Heights, Quezon City, with an area of 1,754 square meters) shall remain in the possession and be titled under the name of the Client.[4]

The contract also provides for a provision on Success Fee which reads as follows:

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[1] Penned by Associate Justice Edwin D. Sorongon, with the concurrence of Associate Justices Marlene Gonzales-Sison and Michael P. Elbinas*; rollo,* pp. 44-52.

[2] *Rollo,* pp. 60-61.

[3] Penned by Presiding Judge Marie Christine A. Jacob; *id.* at 62-71.

[4] *Rollo,* p. 79.

2.3 Success Fee:

In the event Client is successful in retaining possession and having said property titled under the name of the Client, Counsel shall be paid ONE MILLION (₱1,000,000.00) PESOS.[5]

Thereafter, in conformance to the contract, Atty. De Jesus handled eight (8) cases that involved petitioner in relation to the property mentioned in the contract.

To be clear, the subject property was formerly registered in the name of petitioner's sister, Rita Reyes, and her husband Marcial Reyes. The property was then sold to Crisantomas Guno. Prudential Bank lent Guno some amount as partial payment for the purchase of the subject property secured by a mortgage of the same property. After Guno failed to pay the loan, the same property was foreclosed by Prudential Bank; thus, the 8 cases handled by Atty. De Jesus stemmed from such premise.

While acting as lawyer for petitioner, Atty. De Jesus was able to obtain a favorable judgment by having the Decision of the Metropolitan Trial Court (*MeTC*) of Quezon City in Civil Case No. 43-12872 reversed by the RTC of Quezon City, Branch 85 in Civil Case No. 43-12872. Petitioner has also retained, and is still enjoying, the possession of the said property. Atty. De Jesus was also able to obtain favorable decision for petitioner when the RTC of Makati City declared him to be the owner of the subject property to the extent of 70%, the remaining 30% of which was adjudged in favor of Prudential Bank.

As such, Atty. De Jesus claims that the first condition for the payment of the success fee, petitioner's retention of possession, had been fulfilled. Thus, Atty. De Jesus was able to pave the way for the partial fulfillment of the second condition to the extent of 70% of the property. According to Atty. De Jesus, what remains to be titled is only the 30% portion of the property from Prudential Bank. Hence, Atty. De Jesus feels that he is entitled to claim the success fee provided under the contract for legal services.

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[5] *Id.* at 81.

Subsequently, Atty. De Jesus stopped rendering legal services to petitioner after the former drafted the letter offer dated November 30, 2005 stating that petitioner is offering to buy Prudential Bank's ownership of the 30% portion of the subject property. Atty. De Jesus further made a formal demand for petitioner to settle at least 50% of the ₱1,000,000.00 stipulated in the contract as success fee.

Petitioner, on the other hand, claims that he has not paid the success fee because one condition for the payment thereof – the property being titled to his name has not yet been fulfilled. According to petitioner, he cannot yet transfer the title of the subject property to his name because there are pending cases initiated by the Spouses Guno that involves the same property. Petitioner also avers that there is a Decision of the RTC of Quezon City, Branch 95, in Civil Case No. Q-52422 annulling Prudential Bank's title over the property and ordering the reinstatement thereof to the Spouses Guno. The said decision has already been affirmed by this Court and attained its finality. However, petitioner still paid Atty. De Jesus the amount of ₱100,000.00 after the latter made a demand.

Thus, Atty. De Jesus filed a complaint for the collection of sum of money with damages with the RTC of Quezon City and, on May 25, 2011, the said court found in favor of petitioner. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, the complaint is hereby ordered dismissed for lack of cause of action and prematurity. Likewise dismissed is the defendant's claim for attorney's fees, moral damages and exemplary damages.
>
> SO ORDERED.[6]

Atty. De Jesus elevated the case to the CA and, on March 31, 2014, the CA reversed and set aside the Decision of the RTC, thus:

> WHEREFORE, in view of the foregoing premises, the Appeal is PARTIALLY GRANTED. Accordingly, the Decision dated May 25,

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[6] *Id.* at 71.

2011 of the Regional Trial Court of Quezon City, Branch 100 in Civil Case No. Q-06-57463 is hereby ANNULLED AND SET ASIDE and a new one is entered declaring Atty. Clodualdo C. De Jesus entitled to fifty percent (50%) of the success fee as stated in the Contract of Legal Services or FIVE HUNDRED THOUSAND (Php500,000.00) PESOS. The amount of ONE HUNDRED THOUSAND PESOS (Php100,000.00) earlier paid to him by Ramon R. Villarama as advanced payment is ordered deducted therefrom.

SO ORDERED.[7]

His motion for reconsideration having been denied by the CA, petitioner thus filed the present petition with this Court raising the following issues:

A. Whether the Court of Appeals is correct in holding that the respondent is discharged from fulfilling the second condition for the entitlement of the ₱1,000,000.00 success fee because the same has been rendered legally impossible due to the final decision annulling Prudential Bank's title to the subject property.

B. Whether respondent is entitled to fifty percent (50%) of the success fee less the ₱100,000.00 previously paid by the petitioner to respondent.[8]

Petitioner argues that the CA is not correct in discharging Atty. De Jesus from fulfilling the second condition for the entitlement of the ₱1,000,000.00 success fee because there is no legal impossibility for the transfer of title to the property to petitioner. The CA, in its Decision, ruled that due to the facts of the case and the attendant circumstances, the happening of the second condition was jeopardized, placed beyond performance, became legally impossible and manifestly difficult to perform. Petitioner, however, claims that there were still several remedies that Atty. De Jesus could have utilized in order to meet the second condition but the latter had given up and abandoned such task. As such, according to petitioner, Atty. De Jesus is not entitled to fifty (50%) of the success fee less the ₱100,000.00 previously paid by petitioner.

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[7] *Id.* at 51-52.

[8] *Id.* at 27-28.

In his Comment[9] dated September 11, 2015, Atty. De Jesus contends that while it is true that there was no legal impossibility to have the title of the property transferred to petitioner, it was petitioner upon the advice of his counsel who refused to pay the value of the 30% equity of the property in the amount of ₱1,325,000.00. Thus, the second condition is deemed fulfilled because petitioner voluntarily prevented its fulfillment. Atty. De Jesus further asserts that it was only him who secured for petitioner permanent possession of the property and paved the way for petitioner to get a complete title by merely paying the 30% equity of the property.

The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45.[10] This Court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt"[11] when supported by substantial evidence.[12] Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this Court.[13]

In *Cheesman v. Intermediate Appellate Court,*[14] this Court distinguished questions of law from questions of fact, thus:

> As distinguished from a question of law — which exists "when the doubt or difference arises as to what the law is on a certain state of facts" — "there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts;" or when the

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[9] *Id.* at 149-168.

[10] Rules of Court, Rule 45, Sec. 1.

[11] *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil), Inc.,* 364 Phil. 541, 546 (1999) [Per *J.* Pardo, First Division].

[12] *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002) [Per *J.* Pardo, First Division]; *Tabaco v. Court of Appeals*, 239 Phil. 485, 490 (1994) [Per *J.* Bellosillo, First Division]; and *Padilla v. Court of Appeals,* 241 Phil. 776, 781 (1988) [Per *J.* Paras, Second Division].

[13] *Bank of the Philippine Islands v. Leobrera,* 461 Phil. 461, 469 (2003) [Per *J.* Ynares-Santiago, Special First Division].

[14] 271 Phil. 89 (1991) [Per *J.* Narvasa, Second Division].

"query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and the probabilities of the situation."[15]

However, these rules do admit of exceptions.[16] Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:[17]

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a 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 the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact 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 respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[18]

In the present case, the findings of facts of the RTC and the CA are apparently in contrast, hence, this Court deems it proper to rule on the issues raised in the petition.

After careful consideration, this Court finds the petition unmeritorious.

The payment of the success fee, as contained in the Contract for Legal Services, is dependent on the fulfillment of two

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[15] *Cheesman v. IAC, supra,* at 97-98.

[16] *Pascual v. Burgos,* G.R. No. 171722, January 11, 2016, 778 SCRA 189, 205.

[17] 269 Phil. 225 (1990) [Per *J.* Bidin, Third Division].

[18] *Medina v. Mayor Asistio, Jr., supra,* at 232.

conditions, namely: 1) petitioner retaining possession of the subject property, and 2) the property being titled under the name of petitioner. Clearly, this falls under a contingent fee contract. In *The Conjugal Partnership of the Spouses Cadavedo v. Lacaya,*[19] this Court defined a contingent fee contract as "an agreement in writing where the fee, often a fixed percentage of what may be recovered in the action, is made to depend upon the success of the litigation."Contingent fee contracts are permitted in this jurisdiction because they redound to the benefit of the poor client and the lawyer "especially in cases where the client has meritorious cause of action, but no means with which to pay for legal services unless he can, with the sanction of law, make a contract for a contingent fee to be paid out of the proceeds of litigation. Oftentimes, the contingent fee arrangement is the only means by which the poor clients can have their rights vindicated and upheld." Further, such contracts are sanctioned by Canon 13 of the Canons of Professional Ethics.[20]

In this case, it is beyond dispute that the first condition stipulated in the Contract for Legal Services, through the services of Atty. De Jesus, petitioner was able to retain possession of the subject property. The second condition, the transfer of title of the property under the name of petitioner, however, is yet to be fulfilled. According to the CA, the second condition has been rendered legally impossible to fulfill or considered manifestly difficult to perform, thus:

With respect to the second condition, however, the trial court's assessment is that the same is yet to be fulfilled and Atty. De Jesus' claim is premature. We disagree.

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[19] G.R. No. 173188, January 15, 2014,713 SCRA 397, 421-422 as cited in *Rosario Eniquez vda. De Santiago v. Atty. Jose A. Suing,* G.R. No. 194814, *Jaime C. Vistar v. Atty. Jose A. Suing,* G.R. No. 194825, October 21, 2015, 773 SCRA 453, 482.

[20] *Rayos v. Atty. Hernandez,*544 Phil. 447, 463 (2007); *Sesbreño v. Court of Appeals,* 314 Phil. 884, 893 (1995); *Taganas v. National Labor Relations Commission,* G.R. No. 118746, 7 September 1995, 248 SCRA 133, 136; *Licudan v. Court of Appeals,* 271 Phil. 304, 313 (1991); *Director of Lands v. Larrazabal and Ababa,* 177 Phil. 467, 478 (1979).

The facts of the case reveal that the second condition has been rendered legally impossible to fulfill or considered manifestly difficult to perform. The trial court failed to take into consideration the manifestation in Villarama's evidence particularly Exhibit "4" which states that:

> On 1 December 1987, [Crisantomas Guno] and his wife filed the complaint for nullification of defendant Bank's title due to defect in foreclosure proceedings, entitled 'Spouses Crisantomas and Carmelita Guno vs. Prudential Bank and Trust Company docketed as Civil Case No. Q-52422 in the Regional Trial Court Branch 95 of Quezon City. On 18 October 1991, the RTC rendered a Decision annulling defendant Bank's Title and ordering the reinstatement of the spouses Guno's title. The RTC Decision was affirmed on appeal by the Supreme Court and became final and executory on 11 March 1997. This the Decision which [Crisantomas Guno] seeks to enforce in this action.

It must also be noted that when the terms of the agreement was drafted in 1996, the prevailing circumstance then was that the 30% portion of the property was titled in the name of Prudential Bank. Later, however, spouses Guno was able to obtain a final and favourable judgment in 1997 ordering the cancellation of Prudential Bank's title. Spouses Guno has yet to implement said Decision. Thus, the previous understanding that after Atty. De Jesus shall have ensured the ownership of Villarama over the 70% portion of the property and the latter shall buy the remaining 30% of said property from the bank so that Atty. De Jesus can now have it fully titled to Villarama's name was also rendered legally impossible because of the final Decision annulling Prudential Bank's title to the subject property.

Accordingly, under the foregoing subsequent circumstances, the happening of the second condition was jeopardized and placed beyond performance because of these intervening legal developments. Had the trial court been more circumspect and receptive of the present factual circumstances it would have considered that our laws on contract admit certain exceptions in order to discharge the obligor from fulfilling the condition when said condition is rendered beyond performance or it has become so difficult to perform.

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Here, there is no dispute that the legal developments that transpired in the string of cases of Villarama relative to the subject property has rendered the second condition impossible to perform which factor cannot be attributed to Atty. De Jesus. Thus, the condition should be annulled and excuse Atty. De Jesus from the obligation of fulfilling the same before he could obtain the success fee.[21]

Upon consideration of the arguments of both parties, this Court finds that the above-reasoning of the CA is erroneous. There is no legal impossibility in the fulfillment of the second condition. There is still a remedy upon which petitioner may be able to transfer the title of the subject property under his name. In fact, respondent admitted in his Comment that there was no legal impossibility and that the only hindrance was the refusal of petitioner to pay Prudential Bank the value of the 30% equity of the property in the amount of ₱1,325,000.00. Although petitioner insists that it has already taken steps in offering Prudential Bank an amount to settle the issue, this still negates the finding of the CA that it is legally impossible for petitioner to transfer the title of the property under his name.

Be that as it may, the fact still remains that petitioner was already awarded 70% of the subject property by virtue of the RTC's decision in Civil Case No. 95-973 through the services of Atty. De Jesus. Thus, this Court finds that Atty. De Jesus, as well as every attorney, is entitled to have and receive a just and reasonable compensation for services performed at the special instance and request of his client. Once the attorney has performed the task assigned to him in a valid agreement, his compensation is determined on the basis of what he and the client agreed.[22] In the absence of the written agreement, the lawyer's compensation shall be based on *quantum meruit*, which means "as much as he deserved."[23] The determination of attorney's

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[21] *Rollo,* pp. 48-50.

[22] *Nenita D. Sanchez v. Atty. Romeo G. Aguilos,* A.C. No. 10543, March 16, 2016, citing *Francisco v. Malias,* L-16349, January 1, 1964, 10 SCRA 89, 95.

[23] *Id.,* citing *Rilloraza, Africa, De Ocampo and Africa v. Eastern Telecommunications Phils., Inc.,* 369 Phil. 1, 11 (1999).

fees on the basis of *quantum meruit* is also authorized "**when the counsel, for justifiable cause, was not able to finish the case to its conclusion**."[24] Moreover, *quantum meruit* becomes the basis of recovery of compensation by the attorney where the circumstances of the engagement indicate that it will be contrary to the parties' expectation to deprive the attorney of all compensation.[25] In this case, since respondent was not able to fulfill one of the conditions provident in the Contract for Legal Services, his attorney's fees shall be based on *quantum meruit*.

Quantum meruit– literally meaning as much as he deserves – is used as basis for determining an attorney's professional fees in the absence of an express agreement. The recovery of attorney's fees on the basis of *quantum meruit* is a device that prevents an unscrupulous client from running away with the fruits of the legal services of counsel without paying for it and also avoids unjust enrichment on the part of the attorney himself. An attorney must show that he is entitled to reasonable compensation for the effort in pursuing the client's cause, taking into account certain factors in fixing the amount of legal fees.[26]

Rule 20.01 of the *Code of Professional Responsibility* lists the guidelines for determining the proper amount of attorney's fees, to wit:

> Rule 20.1 – A lawyer shall be guided by the following factors in determining his fees:
>
> a) The time spent and the extent of the services rendered or required;
> b) The novelty and difficulty of the questions involved;
> c) The importance of the subject matter;
> d) The skill demanded;
> e) The probability of losing other employment as a result of acceptance of the proffered case;

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[24] *Id.*

[25] *Id.*

[26] *National Power Corporation v. Heirs of MacabangkitSangkay,* 671 Phil. 569, 605 (2011).

f) The customary charges for similar services and the schedule of fees of the IBP chapter to which he belongs;

g) The amount involved in the controversy and the benefits resulting to the client from the service;

h) The contingency or certainty of compensation;

i) The character of the employment, whether occasional or established; and

j) The professional standing of the lawyer.

Having established that petitioner is entitled to attorney's fees and that he filed his claim well within the prescribed period, the proper remedy is to remand the case to the RTC for the determination of the correct amount of attorney's fees. Such a procedural route, however, would only contribute to the delay of the final disposition of the controversy as any ruling by the trial court on the matter would still be open for questioning before the CA and this Court. In the interest of justice, this Court deems it prudent to suspend the rules and simply resolve the matter at this level.[27]

Based on the considerations set forth in Rule 20.01 of the *Code of Professional Responsibility,* this Court rules that the CA was correct in its determination that Atty. De Jesus is entitled to the extent of 50% of the Php1,000,000.00 success fee stipulated in the contract. As ruled by the CA:

> At any rate, Atty. De Jesus cannot claim the entire Php1,000,000.00 success fee because the fact remains that Villarama has yet to place the entire subject property to his name. Thus, applying the *quantum meruit* principle in this case, Atty. De Jesus is deemed to be entitled only to half of the success fee for the effort and legal services he had provided to Villarama. xxx
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> In fine, Villarama, under the Contract of Legal Services, is obliged to pay Atty. De Jesus his success fee to a fair and reasonable extent of 50% or Php500,000.00 considering the latter's substantial performance of his part of the contract. The previous payment made by Villarama in the amount of Php100,000.00 shall be considered as

[27] *Rosario, Jr. v. De Guzman, et al.,*713 Phil. 679, 689 (2013).

an advanced payment deductible from the Php500,000.00 of which Atty. De Jesus is entitled.[28]

It must always be remembered that the fact that the practice of law is not a business and the attorney plays a vital role in the administration of justice underscores the need to secure him his honorarium lawfully earned as a means to preserve the decorum and respectability of the legal profession. A lawyer is as much entitled to judicial protection against injustice, imposition or fraud on the part of his client as the client against abuse on the part of his counsel. The duty of the court is not alone to see that a lawyer acts in a proper and lawful manner; it is also its duty to see that a lawyer is paid his just fees. With his capital consisting of his brains and with his skill acquired at tremendous cost not only in money but in expenditure of time and energy, he is entitled to the protection of any judicial tribunal against any attempt on the part of his client to escape payment of his just compensation. It would be ironic if after putting forth the best in him to secure justice for his client he himself would not get his due.[29]

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated April 20, 2015, of petitioner Ramon R. Villarama is **DENIED** for lack of merit. Consequently, the Decision dated March 31, 2014 and the Resolution dated February 18, 2015 of the Court of Appeals are **AFFIRMED**.

SO ORDERED.

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

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[28] *Rollo,* p. 51.

[29] *Aquino v. Casabar,* G.R. No. 191470, January 26, 2015, 748 SCRA 181, 196, citing *Rosario Jr. v. De Guzman, et al., supra* note 24, at 692.

SECOND DIVISION

[G.R. No. 218040. April 17, 2017]

JUANITO VICTOR C. REMULLA, *petitioner, vs.* **SANDIGANBAYAN (SECOND DIVISION) and ERINEO S. MALIKSI,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRIVATE COMPLAINANT HAS NO LEGAL PERSONALITY TO ASSAIL THE DISMISSAL OF THE CRIMINAL CASE AGAINST THE ACCUSED.— The present case challenges the dismissal of a criminal case due to the violation of the right to speedy disposition of cases. The petition filed before this Court was initiated by Remulla in his capacity as a private complainant without the intervention of either the OSG or the OSP. Although he claims that he has legal standing as a taxpayer, the present case is criminal in nature and the People is the real party in interest. Remulla captioned his petition as "People of the Philippines v. Sandiganbayan (Second Division) and Erineo S. Maliksi" but it is clear that he does not represent the People. Only on rare occasions when the offended party may be allowed to pursue the criminal action on his own behalf such as when there is a denial of due process, or where the dismissal of the case is capricious shall *certiorari* lie. As will be discussed later, Remulla failed to qualify in any of these exceptional circumstances. Accordingly, he has no legal personality to assail the dismissal of the criminal case against Maliksi on the ground of violation of the right to a speedy disposition of his case.

2. ID.; ID.; RIGHTS OF THE ACCUSED; THE RIGHT TO SPEEDY DISPOSITION OF CASES IS A RELATIVE CONCEPT; IN DETERMINING WHETHER THE ACCUSED HAS BEEN DENIED SUCH RIGHT, COURTS ARE GIVEN DISCRETION TO WEIGH FACTS AND CIRCUMSTANCES AND USE BALANCING TEST BEARING IN MIND THE PREJUDICE CAUSED BY THE DELAY BOTH TO THE ACCUSED AND THE STATE.— The right to a speedy disposition of a case, like the right to a

speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed. x x x It must be emphasized that the balancing test is a relative and flexible concept. The factors therein must be weighed according to the different facts and circumstances of each case. The courts are given wide judicial discretion in analyzing the context of the case, bearing in mind the prejudice caused by the delay both to the accused and the State.

3. ID.; ID.; ID.; ID.; WHEN THERE WAS NINE (9) YEARS DELAY IN THE PROCEEDINGS WITHOUT REASONABLE JUSTIFICATION FOR SUCH DELAY, THE SANDIGANBAYAN DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN DISMISSING THE CRIMINAL CASE.— [T]he explanation provided by the OSP falls short of the reasonable justification to authorize delay in the proceedings. It was downright unnecessary to prolong the proceedings for a period of nine (9) years. To summarize, the initial delay began when the Ombudsman did not act with dispatch on the approval or disapproval of the proposed resolution and decision in the Remulla. Due to its delay, the Deputy Ombudsman for Luzon was able to send a memorandum for consolidation with the PCSO case. The mere routing or transfer of the memorandum to the Ombudsman incurred eight (8) months of delay. Then, when the memorandum was approved, it took ten (10) months before the records could be transferred from the Deputy Ombudsman for Luzon to the Ombudsman. Finally, for a period of four (4) years, the consolidated cases sat at the Ombudsman. As the OSP did not submit an explanation as to the status of the case in that 4-year period, the Court can only conduct guesswork on the cause of its delay. Had the Ombudsman immediately approved or disapproved the proposed resolution and decision submitted to its office on January 9, 2007, then the case would have been promptly acted upon. If filed before the Sandiganbayan, the prosecution and the defense could have

timely presented their case. Instead, the Ombudsman chose inaction which led to a chain of delays lasting until July 8, 2014. After the lapse of nine (9) years of being kept in the dark, Maliksi could not have had the opportunity to timely present his case in court due to the extensive delay in the preliminary investigation. Certainly, this protracted period of uncertainty over his criminal case caused him prejudice, living under a cloud of anxiety, suspicion and even, hostility. x x x The Sandiganbayan, after properly taking into consideration all the relevant factors in the balancing test and gave different weight on each factor based on the particular circumstances of this case, came to a conclusion that the Ombudsman committed inordinate delay. The case underwent the intricate and difficult balancing test before Maliksi's right to a speedy disposition of his case was sustained. Thus, the Court rules that the Sandiganbayan did not commit a grave abuse of discretion in dismissing the criminal case against Maliksi.

4. ID.; ID.; ID.; ID.; ACCUSED'S LACK OF OBJECTION OVER THE DELAY WAS NOT GIVEN WEIGHT IN VIEW OF THE PROSECUTION'S MANIFEST FAILURE TO JUSTIFY THE PROTRACTED LULL IN THE PROCEEDINGS.— [T]he Court does not give great weight to Maliksi's lack of objection over the delay because the OSP miserably failed to defend the Ombudsman's inaction. The prosecution could not give an acceptable reason to justify the 9-year interval before the case was filed in court. The proceedings were marred by the delay in the mechanical transfer of documents and records. No steps were taken by the Ombudsman to ensure that the preliminary investigation would be resolved in a timely manner. Clearly, the failure of the prosecution to justify the 9-year interval before the case was filed in court far outweighs Maliksi's own inaction over the delay. As articulated in *Coscolluela, Duterte, Cervantes, People*, and *Inocentes*, the Court reiterates that it is the duty of the prosecutor to expedite the prosecution of the case regardless of whether or not the accused objects to the delay. Likewise, Remulla's argument that the Sandiganbayan only took into account the length of delay in the proceedings deserves scant consideration. Aside from the length of delay, the anti-graft court thoroughly discussed the Ombudsman's failure to give a suitable reason for the delay and the prejudice it had caused to Maliksi. The latter's lack of

follow up with his case was not given much weight because of the prosecution's manifest failure to justify the protracted lull in the proceedings.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioner.
Rodriguez Delos Santos & Naidas Law Office for respondent Maliksi.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for *certiorari* seeking to annul and set aside the February 2, 2015[1] and March 20, 2015[2] Resolutions of the Sandiganbayan Second Division in Criminal Case No. SB-14-CRM-0432, which dismissed the case filed by Juanito Victor C. Remulla *(Remulla)* against respondent Erineo S. Maliksi *(Maliksi)* for violation of Section 3 (e) of Republic Act *(R.A.)* No. 3019 or the Anti-Graft and Corrupt Practices Act.

On August 12, 2005, Remulla filed a criminal complaint against Maliksi before the Office of the Ombudsman *(Ombudsman)* for violation of Section 3 (e) of R.A. No. 3019. He alleged that Maliksi, as governor of Cavite, caused the purchase of certain medical supplies from Allied Medical Laboratories Corporation in November 2002 without conducting any public bidding, thereby giving unwarranted benefit or preference to it. On December 15, 2005, Maliksi filed his counter-affidavit.[3]

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[1] Penned by Associate Justice Teresita V. Diaz-Baldos with Associate Justices Napoleon E. Inoturan and Maria Cristina J. Cornejo, concurring; *rollo*, pp. 19-29.

[2] *Id*. at 31-35.

[3] *Id*. at 24.

The Ombudsman Ruling

After almost nine (9) years, in a resolution, dated August 27, 2014, the Ombudsman found probable cause against Maliksi for violation of Section 3 (e) of R.A. No. 3019.[4]

Maliksi filed his motion for reconsideration, arguing that there was no probable cause and that there was a violation of his right to a speedy disposition of his case.[5] In its order, dated October 22, 2014, the Ombudsman denied the said motion for reconsideration.[6]

In November 2014, the Ombudsman filed an information for violation of Section 3 (e) of R.A. No. 3019 against Maliksi before the Sandiganbayan. Maliksi then filed his Motion to Dismiss,[7] dated November 20, 2014, alleging that the finding of probable cause against him was null and void, and that his constitutional right to a speedy disposition of his case was violated. According to him, the 9-year delay in the proceedings caused him undue prejudice.

The Sandiganbayan Ruling

In its February 2, 2015 Resolution, the Sandiganbayan found that Maliksi's right to a speedy disposition of his case was violated. Thus, it dismissed the case against him. It stated that the explanation provided by the Ombudsman, through the Office of the Special Prosecutor *(OSP)*, was insufficient to justify its 9-year delay in the resolution of Maliksi's case. The Sandiganbayan noted that the interval was caused by the delay in the routing or transmission of the records of the case, which was unacceptable. Citing *Coscolluela v. Sandiganbayan,*[8] *(Coscolluela),* it wrote that it was inconsequential to determine whether an accused had followed up on his case because it was

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[4] *Id*. at 6.

[5] *Id*.

[6] *Id*.

[7] *Id*. at 52-68.

[8] 714 Phil. 55 (2013).

not his duty to do so. The Sandiganbayan opined that it was the Ombudsman's responsibility to expedite the resolution of the case within a reasonable time.

On February 12, 2015, the OSP filed a Motion for Partial Reconsideration[9] arguing that the delay in the preliminary investigation was neither whimsical nor capricious, considering that Maliksi did not complain on the delay.

In its assailed resolution, dated March 20, 2015, the Sandiganbayan denied the motion for partial reconsideration. It reiterated that the fact-finding of the case, which lasted for three (3) years, and the preliminary investigation, which lasted for six (6) years, were due to mechanical routing and avoidable delay. The Sandiganbayan found that such delays were unnecessary and unacceptable. It also echoed *Coscolluela* that it was not the duty of the respondent in a preliminary investigation to follow up on the prosecution of his case.

Hence, this petition.

Issue

WHETHER THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING THE CRIMINAL CASE AGAINST RESPONDENT.[10]

Remulla argues that the Sandiganbayan should not have dismissed the case as there was a finding of probable cause; that there was no violation of Maliksi's right to a speedy disposition of his case because he did not promptly assert his right; that mere mathematical reckoning of the time involved is not sufficient to invoke inordinate delay; that in *Tilendo v. Ombudsman*[11] *(Tilendo),* there must be an active assertion of the right to a speedy disposition of cases before the Ombudsman; and that *Coscolluela* is inapplicable because the petitioner therein was completely unaware of his pending case.

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[9] *Rollo,* pp. 41-51.

[10] *Id*. at 6.

[11] 559 Phil. 739 (2007).

In his Comment,[12] Maliksi countered that the petition was defective because it was filed by Remulla, a private party. He underscored that only the Office of the Solicitor General *(OSG)*, or, in certain instances, the OSP, may bring or defend actions for or on behalf of the Republic of the Philippines. Maliksi also pointed out that the delay of nine (9) years in the preliminary investigation of his case was clearly an inordinate delay. He cited the cases of *Tatad v. Tanodbayan*[13] and *People v. Sandiganbayan,*[14] where even delays of even shorter period of years were considered violations of the right to speedy disposition of cases. Finally, Maliksi argued that the petition was a violation of his constitutional right against double jeopardy because a dismissal of criminal case due to the right to speedy disposition of a case is tantamount to an acquittal.

In his Reply,[15] Remulla averred that he had the legal standing to file this subject petition as a taxpayer or a citizen because public funds were illegally disbursed. He contended that the length of delay was not the only factor that must be considered in determining inordinate delay. Remulla invoked the cases of *Guerrero v. CA*[16] *(Guerrero), Bernat v. Sandiganbayan*[17] *(Bernat)* and *Tello v. People*[18] *(Tello),* where the failure of the accused to assert his right to a speedy disposition of his case was deemed a waiver for such right. He pointed out that Maliksi knew that there was a pending case against him but he never asserted his right to a speedy disposition of his case during the preliminary investigation. Finally, Remulla claimed that there was no violation of the right against double jeopardy as the dismissal of Maliksi's case was tainted with grave abuse of discretion.

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[12] *Id.* at 144-152.

[13] 242 Phil. 563 (1988).

[14] 723 Phil. 444 (2013).

[15] *Rollo,* pp. 177-185.

[16] 327 Phil. 496 (1996).

[17] 472 Phil. 869 (2004).

[18] 606 Phil. 514 (2009).

In its Comment,[19] the Ombudsman, through the OSP, argued that Court must provide a definitive ruling on the concept of inordinate delay because the current model was still in a state of perpetual flux. It opined that *Coscolluela* was inapplicable in the present case as Maliksi was aware of the pending case against him before the Ombudsman. The OSP also emphasized that the Sandiganbayan merely dismissed the case against Maliksi by considering the sole factor of length of delay. It cited the case of *Barker v. Wingo,*[20] where the defendant's assertion of, or failure to assert, his right to a speedy trial was one of the factors to be considered in an inquiry whether there was deprivation of such right. The OSP echoed the argument of Remulla that an accused who does not take any step whatsoever to accelerate the disposition of the case was deemed to have slept on his right and have given acquiesces to the supervening delays.

The Court's Ruling

The petition is bereft of merit.

The petition was filed by a private party

Procedural law mandates that all criminal actions, commenced by a complaint or an information, shall be prosecuted under the direction and control of a public prosecutor. In appeals of criminal cases before the Court of Appeals *(CA)* and before this Court, the OSG is the appellate counsel of the People, pursuant to Section 35 (1), Chapter 12, Title III, Book IV of the 1987 Administrative Code.[21] In certain instances, the OSP represented the People when it involved criminal cases within the jurisdiction of the Sandiganbayan.[22]

The present case challenges the dismissal of a criminal case due to the violation of the right to speedy disposition of cases. The petition filed before this Court was initiated by Remulla

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[19] *Rollo,* pp. 245-255.

[20] 407 U.S. 514.

[21] *Jimenez v. Sorongon,* 700 Phil. 316, 324 (2012).

[22] *Office of the Ombudsman v. Breva*, 517 Phil. 396, 405 (2006).

in his capacity as a private complainant without the intervention of either the OSG or the OSP. Although he claims that he has legal standing as a taxpayer, the present case is criminal in nature and the People is the real party in interest.[23] Remulla captioned his petition as "People of the Philippines v. Sandiganbayan (Second Division) and Erineo S. Maliksi"[24] but it is clear that he does not represent the People.

Only on rare occasions when the offended party may be allowed to pursue the criminal action on his own behalf such as when there is a denial of due process,[25] or where the dismissal of the case is capricious shall *certiorari* lie.[26] As will be discussed later, Remulla failed to qualify in any of these exceptional circumstances. Accordingly, he has no legal personality to assail the dismissal of the criminal case against Maliksi on the ground of violation of the right to a speedy disposition of his case.

The right to a speedy disposition of cases is a relative concept

The right to a speedy disposition of a case, like the right to a speedy trial,[27] is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a

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[23] *Supra* note 21.

[24] *Rollo,* p. 3.

[25] *Supra* note 21.

[26] *Villareal v. People,* 680 Phil. 527, 558 (2012).

[27] See *Philippine Coconut Producers Federation, Inc. v. Republic,* 679 Phil. 508 (2012), where it was held that the right to a speedy trial is available only to an accused and is a peculiarly criminal law concept, while the broader right to a speedy disposition of cases may be tapped in any proceedings conducted by state agencies.

speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed.[28]

More than a decade after the 1972 leading U.S. case of *Barker v. Wingo*[29] was promulgated, this Court, in *Martin v. Ver*,[30] began adopting the "balancing test" to determine whether a defendant's right to a speedy trial and a speedy disposition of cases has been violated. As this test necessarily compels the courts to approach such cases on an *ad hoc* basis, the conduct of both the prosecution and defendant are weighed *apropos* the four-fold factors, to wit: (1) length of the delay; (2) reason for the delay; (3) defendant's assertion or non-assertion of his right; and (4) prejudice to defendant resulting from the delay. None of these elements, however, is either a necessary or sufficient condition; they are related and must be considered together with other relevant circumstances. These factors have no talismanic qualities as courts must still engage in a difficult and sensitive balancing process.[31]

In this case, Remulla argues that the cases of *Tilendo, Guerrero, Bernat,* and *Tello* dictate that it is mandatory for a respondent or accused to actively assert his right to a speedy disposition of his case before it may be dismissed on the said ground. He insists that Maliksi failed to follow up on his case during the preliminary investigation, hence, he cannot invoke his right to a speedy disposition of his case. Further, he avers that the doctrine in *Coscolluela,* where the Court held that there was no need for the respondent to follow up his case, is not controlling and it is only applicable when the respondent is completely unaware of the preliminary investigation against him.

To resolve these issues, the first set of cases cited by Remulla must be examined to determine whether it is mandatory for a

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[28] *Lumanlaw y Bulinao v. Peralta, Jr.,* 517 Phil. 588, 598 (2006).

[29] *Supra* note 20.

[30] 208 Phil. 658 (1983).

[31] *Spouses Uy v. Adriano,* 536 Phil. 475, 498 (2006).

respondent or accused to assert his right to a speedy disposition of his case. Also, the case of *Coscolluela* and its related cases must be evaluated whether the respondent or accused has the obligation to follow up his case.

Tilendo, Guerrero, Bernat, and Tello cases

In *Tilendo,* the petitioner therein invoked his right to a speedy disposition of his case because the preliminary investigation by the NBI lasted for three (3) years before it filed a complaint before the Ombudsman. In denying his petition, the Court held that there was no unreasonable delay to speak of because the preliminary investigation stage only began after the NBI filed its complaint against Tilendo. Even assuming there was delay in the termination of the preliminary investigation, Tilendo did not do anything to accelerate the disposition of his case.

In *Guerrero,* the last pleading before the Court of First Instance was filed on December 21, 1979. The case was later re-assigned to two other judges, and on March 14, 1990, the last judge found out that the transcript of stenographic notes *(TSN)* was incomplete and ordered the parties to have the same completed. The petitioner therein filed a motion to dismiss on the ground that his right to a speedy trial had been violated. The Court ruled that there was no such violation because it was only after the new judge reset the retaking of the testimonies that the petitioner asserted his right. It was also held that a judge could hardly be faulted for the delay because he could not have rendered the decision without the TSN. The Court observed that the conduct of the case could have a different dimension had the petitioner made some overt act to assert his right.

Later, in *Bernat,* the criminal case against the petitioner therein was submitted for resolution before the Sandiganbayan on August 23, 1994. It was reassigned to Justice Ma. Cristina G. Cortez-Estrada upon her assumption of office on November 3, 1998; and sometime in 2002, she found out that some of the TSN were missing. Thus, the parties were ordered to attend a conference to discuss the matter. Instead of attending the

conference, the petitioner therein filed a motion asserting his right to a speedy trial. In dismissing his argument, the Court cited the case of *Guerrero* where the TSN were also lost and the judge had to retake the testimonies. It noted that the petitioner failed to assert his rights. The Court also reiterated the ruling in *Guerrero* that the case could have taken a different dimension had the petitioner actively asserted his right to a speedy trial.

Similarly, *Tello* echoed the doctrine in *Bernat* because the petitioner therein did not take any step to accelerate the disposition of his case. He only invoked his right to speedy trial after the Sandiganbayan promulgated its decision convicting him for malversation of public funds.

Coscolluela and its related cases

In *Coscolluela,* the petitioners therein were investigated for violation of Section 3(e) of R.A. No. 3019. In a resolution, dated March 27, 2003, the assigned graft investigator found probable cause against the petitioners. The Ombudsman, however, only approved the said resolution on May 21, 2009 and filed the information on June 19, 2009. The petitioners sought to dismiss the case as the delay of six (6) years violated their right to a speedy disposition of their case. In upholding the position of the petitioners, the Court ruled that there was unjustified delay in the preliminary investigation of the case. The Ombudsman could not give a sufficient justification why it took six (6) years before it approved the resolution of the graft investigator. The Court also held that it was not the petitioners' duty to follow up on the prosecution of their case. The petitioners therein were not informed of the ongoing preliminary investigation against them.

Coscolluela relied on the case of *Duterte v. Sandiganbayan*[32] *(Duterte)* to justify that there was no requirement to follow up a case. In the said case, the petitioners were required to file a comment, instead of a counter-affidavit. The preliminary investigation was delayed for four (4) years. They could not

[32] 352 Phil. 557 (1998).

have urged the speedy resolution of their case because they were completely unaware that the investigation was still ongoing. The Court also noted therein that the Ombudsman failed to present any plausible, special or even novel reason which could justify the 4-year delay in terminating its investigation and the incident did not involve complicated factual and legal issues.

Earlier, in *Cervantes v. Sandiganbayan*[33] *(Cervantes),* a complaint for violation of Section 3(e) of R.A. No. 3019 was filed before the Tanodbayan. On October 16, 1986, the petitioner therein filed an affidavit to answer the allegations against him. On May 18, 1992, or after almost six (6) years, an information was filed by the OSP with the Sandiganbayan. The petitioner asserted his right to a speedy disposition of his case. The Court upheld his right because the OSP's explanation that no political motivation appeared to have tainted the prosecution of the case was insufficient reason to excuse the inordinate delay. It was also ruled therein that "[i]t is the duty of the prosecutor to speedily resolve the complaint, as mandated by the Constitution, **regardless of whether the petitioner did not object to the delay** or that the delay was with his acquiescence provided that it was not due to causes directly attributable to him."[34]

More recently, in *People v. Sandiganbayan*[35] *(People)*, a complaint was filed against the private respondents therein on December 28, 1994 before the Ombudsman. The last counter-affidavit was filed by the private respondents on March 11, 1996. On July 10, 1996, the special prosecution officer issued a memorandum recommending the filing of violation of Section 3 (e) of R.A. 3019 and was approved by the Deputy Ombudsman. Instead of filing the information, however, the case was subjected to several "thorough review and reevaluation." It was only on October 6, 2009 that the criminal informations were filed before the Sandiganbayan. Eventually, the private respondents implored their right to speedy disposition of their case.

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[33] 366 Phil. 602 (1999).

[34] *Id*. at 609.

[35] G.R. Nos. 199151-56, July 25, 2016.

It was held therein that there was inordinate delay of twelve (12) years from the time that the last counter-affidavit was filed until the informations were lodged before the court. The explanation of the OSP that the case was subjected to a painstaking review and that the Ombudsman had to transfer to its new building were not given credence by the Court. It emphasized that the Ombudsman simply failed to timely exercise its discretion as to whether or not to file criminal cases against the private respondents. The Court did not sustain the OSP's argument that the respondents must be blamed for not taking any step whatsoever to accelerate the disposition of the matter. Citing *Cervantes,* the Court reiterated that it was the duty of the prosecutor to expedite the prosecution of the case regardless of the fact that the accused did not object to the delay.

Finally, in *Inocentes v. People*[36] *(Inocentes),* a complaint for violation of Section 3 (e) was filed before the Ombudsman against the petitioner therein. Following the denial of his motion for reconsideration on November 14, 2005, the prosecution filed the informations with the Regional Trial Court *(RTC)* Tarlac City. On March 14, 2006, however, the Ombudsman ordered the withdrawal of the informations. From this point, it took almost six (6) years, or only on May 2, 2012, before the informations were filed with the Sandiganbayan. The Court opined that there was inordinate delay in the disposition of the petitioner's case because it took six (6) years before his case and the records thereof was transferred from the RTC to the Sandiganbayan. The argument of the OSP that the petitioner had no right to complain about the delay because he failed to seasonably invoke his right was not upheld by the Court. It reiterated the doctrine of *Coscolluela* that it was not the petitioners' duty to follow up on the prosecution of their case.

Harmonizing the two sets of cases

The first set of cases shows that the criminal cases were not dismissed because of the non-assertion of the accused of their right to a speedy disposition of cases or speedy trial. Other

[36] G.R. Nos. 205963-64, July 7, 2016.

factors in the balancing test were also considered by the Court, particularly, the reason for the delay in the proceedings and the prejudice caused by the delay.

In *Guerrero* and *Bernat,* it was held that the delay was acceptable because there was a necessity to retake the testimonies of the witnesses due to the lost TSN. The courts could not have adjudicated the case without the TSN. On the other hand, in *Tilendo,* the Court accepted the explanation of the OSP that there was no inordinate delay because the NBI's inquiry was not part of the preliminary investigation. Hence, as the length of delay in these cases were properly justified by the prosecution and the accused therein failed to take steps to accelerate their cases, the Court found that there was no prejudice caused, which would warrant the assertion of their right to a speedy disposition of cases.

In the second set of cases, the lengthy delay in the proceeding against the accused therein was not satisfactorily explained. In *Cervantes,* the prosecution provided a lackluster excuse that there was no inordinate delay because the case was not politically motivated. In *People,* the filing of the case in court was drastically delayed because it was subjected to unnecessary reviews, and the Ombudsman basically failed to decide whether to file the case or not. In *Inocentes,* there was an unwarranted delay in the filing of the case due to the lethargic transfer of the records from the RTC to the Sandiganbayan. Finally, in *Coscolluela,* the Ombudsman could not give an explanation why the preliminary investigation was delayed for six years.

Essentially, the Court found in those cases that the State miserably failed to give an acceptable reason for the extensive delay. Due to the manifest prejudice caused to the accused therein, the Court no longer gave weighty consideration to their lack of objection during the period of delay. It was emphasized in those cases that it was the duty of the prosecutor to expedite the prosecution of the case regardless if the accused failed to object to the delay.

Based on the foregoing, there is no conflict between the first and the second set of cases. In the first set, the Court did not

solely rely on the failure of the accused to assert his right; rather, the proper explanation on the delay and the lack of prejudice to the accused were also considered therein. In the same manner, the Court in the second set of cases took into account several factors in sustaining the right of the accused to a speedy disposition of cases, such as the length of delay, the failure of the prosecution to justify the period of delay, and the prejudice caused to the accused. The utter failure of the prosecution to explain the delay of the proceedings outweighed the lack of follow ups from the accused.

Accordingly, both sets of cases only show that "[a] balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis."[37] To reiterate, none of the factors in the balancing test is either a necessary or sufficient condition; they are related and must be considered together with other relevant circumstances. *Corpus v. Sandiganbayan*[38] thoroughly explained how the factors of the balancing test should be weighed, particularly the prejudiced caused by the delay, to wit:

xxx **Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system.** There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.

Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities

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[37] *Corpuz v. Sandiganbayan*, 484 Phil. 899, 917 (2004).

[38] *Id*.

or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in Williams v. United States, for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.

Closely related to the length of delay is the reason or justification of the State for such delay. Different weights should be assigned to different reasons or justifications invoked by the State. For instance, a deliberate attempt to delay the trial in order to hamper or prejudice the defense should be weighted heavily against the State. Also, it is improper for the prosecutor to intentionally delay to gain some tactical advantage over the defendant or to harass or prejudice him. On the other hand, the heavy case load of the prosecution or a missing witness should be weighted less heavily against the State. Corollarily, Section 4, Rule 119 of the Revised Rules of Criminal Procedure enumerates the factors for granting a continuance.[39] [Emphases supplied]

Remulla argues that the assertion or non-assertion of the right to a speedy disposition of cases determines whether the court must dismiss the case for inordinate delay or continue the proceedings. Such argument, however, fails to persuade. It must be emphasized that the balancing test is a relative and flexible concept. The factors therein must be weighed according to the different facts and circumstances of each case. The courts are given wide judicial discretion in analyzing the context of the case, bearing in mind the prejudice caused by the delay both to the accused and the State.

In addition, there is no constitutional or legal provision which states that it is mandatory for the accused to follow up his case before his right to its speedy disposition can be recognized. To rule otherwise would promote judicial legislation where the Court would provide a compulsory requisite not specified by

[39] *Id*. at 918-919.

the constitutional provision. It simply cannot be done, thus, the *ad hoc* characteristic of the balancing test must be upheld.

Likewise, contrary to the argument of the OSP, the U.S. case of *Barker v. Wingo,*[40] from which the balancing test originated, recognizes that a respondent in a criminal case has no compulsory obligation to follow up on his case. It was held therein that "[a] defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process."[41]

Finally, Remulla argues that the doctrine in *Coscolluela* – that the accused has no duty to follow up on the prosecution of their case – only applies to cases where the accused is unaware of the preliminary investigation. A review of related and subsequent cases, however, validates the said doctrine that it is applicable even if the accused was fully informed and had participated in the investigation. In *Cervantes*, the petitioner filed his affidavit before the Tanodbayan to answer the allegations against him. In *People,* the respondents therein were able to file their counter-affidavit with the Ombudsman. In *Inocentes,* the petitioner filed a motion for reconsideration before the Ombudsman. In all these cases, the accused were completely informed of the preliminary investigation against them and they were able to participate in the proceedings before the delays were incurred. In spite of this, the Court applied the doctrine in *Coscolluela* because it was the Ombudsman's responsibility to expedite the proceedings within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it.

In fine, it has been settled that the factors in the balancing test must be given different consideration and weight based on the factual circumstances of each case. Applying such principle in this case, the Court can now determine whether or not the Ombudsman committed inordinate delay and violated Maliksi's right to a speedy disposition of his case.

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[40] *Supra* note 20.

[41] *Id*. at 527.

The Ombudsman failed to justify the delay in the proceedings

As indicated in the resolution, dated February 2, 2015, of the Sandiganbayan, the OSP gave the following explanation regarding the delay in the proceedings against Maliksi as follows:

In justifying the length of time that it took the OMB to resolve the case, the prosecution meticulously explains that three different cases were filed against the accused, two of which were from the complaint of Juan (sic) Victor C. Remulla for Violation of the Anti-Graft Law and for Grave Misconduct, which was received by the Office of the Deputy Ombudsman for Luzon on **August 7, 2005** *(Remulla complaints)*. The third case was through the Feedback Report of PCSO Fund Allocation Department Manager Teresita Brazil regarding the "Approved Financial Assistance of ₱10M to province of Cavite c/o Gov. Ayong Maliksi," which was transmitted to the Ombudsman Central Office in 2005 *(PCSO complaint)*. This was allegedly assigned for fact-finding investigation in **July 3, 2006** under CPL-C-05-0188. Upon completion of the investigation, the complete record of the third case was said to have been forwarded to the Office of the Deputy Ombudsman for Luzon on **September 26, 2008** for consolidation with the two cases initiated by complainant Remulla.

Since the complete records of the Remulla cases, including the proposed Resolution and Decision, had already been submitted to the Ombudsman Proper for approval on January 9, 2007, through the Central Record Division, the Deputy Ombudsman for Luzon sent a Memorandum dated **October 24, 2008** to the Ombudsman requesting that the third PCSO case be incorporated with the two Remulla cases already resolved. This Memorandum Request was allegedly received by the Ombudsman Proper on **June 4, 2009** and approved by then Ombudsman Merceditas N. Gutierrez. On **April 6, 2010**, the Chief Administrative Officer of the Office of the Deputy Ombudsman for Luzon forwarded the complete record of the third PCSO case to the Chief of the Central Records Division for incorporation with the two Remulla cases.

Continuing to the recital of events, the prosecution states that the cases against the accused were resolved by the Office of the Deputy Ombudsman for Luzon as early as 2007 and were forwarded in the same year to the Ombudsman Proper for final approval. Unfortunately,

final action on the Resolution was allegedly overtaken by disruptive incidents and political events like the 2010 hostage-taking at the Quirino Grandstand and the impeachment of Ombudsman Gutierrez that led to her resignation in April 2011.[42] [Emphases supplied]

The length of delay in the proceedings of Maliksi's case must first be determined. In *People v. Sandiganbayan,*[43] it was held that inordinate delay should be computed from the time of the fact-finding investigation until the completion of the preliminary investigation by the Ombudsman. The Court expounded that "[t]he guarantee of speedy disposition under Section 16 of Article III of the Constitution applies to all cases pending before all judicial, quasi-judicial or administrative bodies. The guarantee would be defeated or rendered inutile if the hair-splitting distinction by the State is accepted. Whether or not the fact-finding investigation was separate from the preliminary investigation conducted by the Office of the Ombudsman should not matter for purposes of determining if the respondents' right to the speedy disposition of their cases had been violated."[44]

Applying the foregoing rule, the delay in Maliksi's case started from the fact-finding investigation of the Ombudsman when he filed his counter-affidavit in Remulla cases on December 15, 2005 until the completion of the PCSO case on October 24, 2008, or a span of three (3) years. At that point, the preliminary investigation began, until it was terminated on August 27, 2014 and the information was filed before the court in November 2014, or a period of six (6) years. Thus, the Sandiganbayan observed that the delay incurred in the proceedings lasted for a total period of nine (9) years. Even if the Court excludes the fact-finding stage of three (3) years, there was still six (6) years of inordinate delay.

As to the reason for the delay, the Court is of the view that the explanation provided by the OSP fails to justify the delay of six (6) years in the resolution of the case against Maliksi because, *first,* there was a delay in the approval of the Remulla

[42] *Rollo,* pp. 25-26.
[43] *Supra* note 14.
[44] *Id*. at 493.

complaints by the Ombudsman. These complaints were filed in 2005 and Maliksi filed his counter-affidavit in the same year, on December 15, 2005. According to the OSP, the proposed resolution and decision for the Remulla cases were submitted to the Ombudsman as early as January 9, 2007 for approval. The resolution and decision, however, remained unacted by the Ombudsman so much so that it was only after one (1) year and nine (9) months that the Deputy Ombudsman for Luzon was able to send a memorandum, dated October 24, 2008, for their consolidation with the PCSO case. No explanation for the Ombudsman's inaction on the Remulla cases was advanced by the OSP.

Second, while the memorandum for consolidation of the Remulla and PCSO cases was dated October 24, 2008, it was only received by the Ombudsman on June 4, 2009. Evidently, the mere routing or transfer of the memorandum from the Deputy Ombudsman for Luzon to the Ombudsman took almost eight (8) months. Then Ombudsman Gutierrez approved the memorandum for consolidation on an unspecified date.

Third, notwithstanding the approval of the consolidation by the Ombudsman, it was only on April 6, 2010 when the Chief Administrative Officer of the Deputy Ombudsman for Luzon forwarded the complete record of the third PCSO case to the Chief of the Central Records Division. As the approval of the memorandum on consolidation was undated, the Sandiganbayan assumed that the cause of delay was either the Ombudsman's belated approval or the Chief Administrative Officer of the Deputy Ombudsman's delay in the transmittal of the case records. In either case, a delay of ten (10) months for the implementation of a memorandum for consolidation is unacceptable.

Noticeably, the transfer of these memoranda and records are ministerial in nature and does not require the exercise of discretion. Thus, the Court is baffled on how these routine acts could take so long to be accomplished. As properly observed by the Sandiganbayan, routine matters could have been exercised at a faster pace in order to avoid unnecessary delay that expectedly bears heavily on litigants.[45]

[45] *Rollo,* p. 27.

Fourth, from the time that the consolidation of the Remulla and PCSO cases were approved on April 6, 2010, it took four (4) years, or until July 8, 2014, before the joint resolution finding probable cause against Maliksi was issued by the Ombudsman. There is a void of account as to what exactly happened to the case during this 4-year period. Even more baffling was that although the cases were consolidated, the information filed in November 2014 only involved the Remulla case.

Lastly, the OSP sought the understanding of the Sandiganbayan and explained that the resolution of the consolidated cases was overtaken by disruptive events such as the 2010 hostage-taking at the Quirino Grandstand and the impeachment complaint against the Ombudsman Gutierrez. These excuses, however, could hardly be considered as enough reason to warrant the delay in the proceedings. Obviously, these events have no direct relation to the Remulla and PCSO cases to affect their speedy resolution. The functions of the Ombudsman under the Constitution are not suspended by the occurrence of unrelated events to its mandate, whether political or not. Moreover, to sustain the argument of the OSP would set a perilous precedent as the delayed cases pending before the Ombudsman from 2010 to 2014 can simply be overlooked by citing these occasions.

Based on the foregoing, the explanation provided by the OSP falls short of the reasonable justification to authorize delay in the proceedings. It was downright unnecessary to prolong the proceedings for a period of nine (9) years. To summarize, the initial delay began when the Ombudsman did not act with dispatch on the approval or disapproval of the proposed resolution and decision in the Remulla. Due to its delay, the Deputy Ombudsman for Luzon was able to send a memorandum for consolidation with the PCSO case. The mere routing or transfer of the memorandum to the Ombudsman incurred eight (8) months of delay. Then, when the memorandum was approved, it took ten (10) months before the records could be transferred from the Deputy Ombudsman for Luzon to the Ombudsman. Finally, for a period of four (4) years, the consolidated cases sat at the Ombudsman. As the OSP did not submit an explanation as to

the status of the case in that 4-year period, the Court can only conduct guesswork on the cause of its delay.

Had the Ombudsman immediately approved or disapproved the proposed resolution and decision submitted to its office on January 9, 2007, then the case would have been promptly acted upon. If filed before the Sandiganbayan, the prosecution and the defense could have timely presented their case. Instead, the Ombudsman chose inaction which led to a chain of delays lasting until July 8, 2014. After the lapse of nine (9) years of being kept in the dark, Maliksi could not have had the opportunity to timely present his case in court due to the extensive delay in the preliminary investigation. Certainly, this protracted period of uncertainty over his criminal case caused him prejudice, living under a cloud of anxiety, suspicion and even, hostility.

Further, in light of the circumstances of this case, the Court does not give great weight to Maliksi's lack of objection over the delay because the OSP miserably failed to defend the Ombudsman's inaction. The prosecution could not give an acceptable reason to justify the 9-year interval before the case was filed in court. The proceedings were marred by the delay in the mechanical transfer of documents and records. No steps were taken by the Ombudsman to ensure that the preliminary investigation would be resolved in a timely manner. Clearly, the failure of the prosecution to justify the 9-year interval before the case was filed in court far outweighs Maliksi's own inaction over the delay. As articulated in *Coscolluela, Duterte, Cervantes, People,* and *Inocentes,* the Court reiterates that it is the duty of the prosecutor to expedite the prosecution of the case regardless of whether or not the accused objects to the delay.

Likewise, Remulla's argument that the Sandiganbayan only took into account the length of delay in the proceedings deserves scant consideration. Aside from the length of delay, the anti-graft court thoroughly discussed the Ombudsman's failure to give a suitable reason for the delay and the prejudice it had caused to Maliksi. The latter's lack of follow up with his case was not given much weight because of the prosecution's manifest failure to justify the protracted lull in the proceedings. The

Sandiganbayan, after properly taking into consideration all the relevant factors in the balancing test and gave different weight on each factor based on the particular circumstances of this case, came to a conclusion that the Ombudsman committed inordinate delay. The case underwent the intricate and difficult balancing test before Maliksi's right to a speedy disposition of his case was sustained. Thus, the Court rules that the Sandiganbayan did not commit a grave abuse of discretion in dismissing the criminal case against Maliksi.

To conclude, the Court finds it proper to reiterate the underlying principle of the constitutional right to a speedy disposition of cases in the landmark case of *Tatad v. Sandiganbayan:*[46]

> xxx Substantial adherence to the requirements of the law governing the conduct of preliminary investigation, including substantial compliance with the time limitation prescribed by the law for the resolution of the case by the prosecutor, is part of the procedural due process constitutionally guaranteed by the fundamental law. Not only under the broad umbrella of the due process clause, but under the constitutional guarantee of "speedy disposition" of cases as embodied in Section 16 of the Bill of Right (both in the 1973 and the 1987 Constitutions), the inordinate delay is violative of the petitioner's constitutional rights. xxx
>
> It has been suggested that the long delay in terminating the preliminary investigation should not be deemed fatal, for even the complete absence of a preliminary investigation does not warrant dismissal of the information. True — but the absence of a preliminary investigation can be corrected by giving the accused such investigation. But an undue delay in the conduct of a preliminary investigation cannot be corrected for now, until man has not yet invented a device for setting back time.[47]

WHEREFORE, the petition is **DENIED**. The February 2, 2015 and March 20, 2015 Resolutions of the Sandiganbayan Second Division in SB-14-CRM-0432 are **AFFIRMED** *in toto*.

SO ORDERED.

Carpio (Chairperson), Peralta, Leonen, and *Martires, JJ.,* concur.

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[46] *Supra* note 13.

[47] *Id*. at 575-576.

FIRST DIVISION

[G.R. No. 221153. April 17, 2017]

CONCEPCION C. DAPLAS, City Treasurer, Pasay City, and Concurrent OIC, Regional Director Bureau of Local Government Finance (BLGF) Region VII, *petitioner, vs.* **DEPARTMENT OF FINANCE, represented by TROY FRANCIS C. PIZARRO, JOSELITO F. FERNANDEZ, REYNALDO[*] L. LAZARO, MELCHOR B. PIOL, and ISMAEL S. LEONOR, and THE OFFICE OF THE OMBUDSMAN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICIALS AND EMPLOYEES; DISHONESTY AND MISCONDUCT, DEFINED AND EXPLAINED; FOR A CHARGE OF GRAVE MISCONDUCT TO PROSPER, THE ELEMENTS OF CORRUPTION OR CLEAR INTENT TO VIOLATE THE LAW MUST BE SHOWN AS WELL AS THE NEXUS BETWEEN THE ACT COMPLAINED OF AND THE DISCHARGE OF DUTY.— Dishonesty is committed when an individual *intentionally* makes a false statement of any material fact, practices or attempts to practice any deception or fraud in order to secure his examination, registration, appointment, or promotion. It is understood to imply the disposition to lie, cheat, deceive, betray or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; and the lack of fairness and straightforwardness. On the other hand, **misconduct is *intentional* wrongdoing or *deliberate* violation of a rule of law or standard of behavior.** To constitute an administrative offense, misconduct **should relate to or be connected with the performance of the official functions and duties of a public officer. In grave misconduct,** as distinguished from simple misconduct, **the elements of corruption, clear intent to violate the law, or flagrant disregard of an established**

[*] Reynalito in some parts of the records; *rollo*, p. 98.

rule must be manifest. Without any of these elements, the transgression of an established rule is properly characterized as simple misconduct only. Most importantly, without a **nexus between the act complained of and the discharge of duty,** the charge of grave misconduct shall necessarily fail.

2. ID.; ID.; ID.; MERE NON-DECLARATION OF THE REQUIRED DATA IN THE STATEMENT OF ASSETS, LIABILITIES AND NETWORTH (SALN) DOES NOT AUTOMATICALLY AMOUNT TO DISHONESTY; IN THE ABSENCE OF BAD FAITH, OR ANY MALICIOUS INTENT TO CONCEAL THE TRUTH OR MAKE FALSE STATEMENT AND WHERE THE SOURCE OF UNDISCLOSED WEALTH WAS PROPERLY ACCOUNTED FOR, PETITIONER CANNOT BE ADJUDGED GUILTY OF DISHONESTY.— [T]he failure to file a truthful SALN puts in doubt the integrity of the public officer or employee, and would normally amount to dishonesty. It should be emphasized, however, that mere non-declaration of the required data in the SALN does not automatically amount to such an offense. Dishonesty requires malicious intent to conceal the truth or to make false statements. In addition, **a public officer or employee becomes susceptible to dishonesty only when such non-declaration results in the accumulated wealth becoming manifestly disproportionate to his/her income, and income from other sources, and he/she fails to properly account or explain these sources of income and acquisitions.** Here, the Court finds that there is no substantial evidence of intent to commit a wrong, or to deceive the authorities, and conceal the other properties in petitioner's and her husband's names. Petitioner's failure to disclose in her 1997 SALN her business interest in KEI is not a sufficient badge of dishonesty in the absence of bad faith, or any malicious intent to conceal the truth or to make false statements. Bad faith does not simply connote bad judgment or negligence. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill-will for ulterior purposes. Notably, petitioner readily admitted in her Counter-Affidavit her business interest in KEI in 1997, which belied any malicious intent to conceal. While concededly, the omission would increase her net worth for the year 1997, the Court observes that the Ombudsman declared respondent's evidence insufficient to

warrant a finding that petitioner had any unexplained wealth. On the contrary, it found that her children have the financial capacity to put up KEI. It should be emphasized that **the laws on SALN aim to curtail the acquisition of unexplained wealth.** Thus, in several cases **where the source of the undisclosed wealth was properly accounted for, the Court deemed the same an "explained wealth" which the law does not penalize.** Consequently, absent any intent to commit a wrong, and having accounted for the source of the "undisclosed wealth," as in this case, petitioner cannot be adjudged guilty of the charge of Dishonesty[.]

3. ID.; ID.; ID.; NEGLIGENCE, DEFINED AND EXPLAINED; FAILURE TO DECLARE IN THE SALN A CAR REGISTERED IN THE NAME OF THE SPOUSE WHO WAS FINANCIALLY CAPABLE OF PURCHASING IT AMOUNT TO SIMPLE NEGLIGENCE.— Negligence is the omission of the diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time, and of the place. **In the case of public officials, there is negligence when there is a breach of duty or failure to perform the obligation,** and there is gross negligence when a breach of duty is flagrant and palpable. **An act done in good faith, which constitutes only an error of judgment and for no ulterior motives and/or purposes, as in the present case, is merely Simple Negligence.** In the same vein, petitioner's failure to declare the Galant sedan in her SALNs from 1997 to 2003 stemmed from the fact that the same was registered in her husband's name, and purportedly purchased out of his personal money. While such bare allegation is not enough to overthrow the presumption that the car was conjugal, neither is there sufficient showing that petitioner was motivated by bad faith in not disclosing the same. In fact, the Ombudsman conceded that petitioner's husband was financially capable of purchasing the car, negating any "unexplained wealth" to warrant petitioner's dismissal due to Dishonesty. Likewise, the charge of Grave Misconduct against petitioner must fail. Verily, the omission to include the subject properties in petitioner's SALNs, by itself, does not amount to Grave Misconduct, in the absence of showing that such omission had, in some way, hindered the rendition of sound public service for there is no direct relation or connection between the two. Accordingly, the Court finds

no reason to hold petitioner liable for the charges of Dishonesty and Grave Misconduct, but declares her guilty, instead, of Simple Negligence in accomplishing her SALN.

4. ID.; ID.; ID.; ID.; PROPER PENALTY FOR SIMPLE NEGLIGENCE; FINE IMPOSED IN VIEW OF PETITIONER'S RESIGNATION AND ADMISSION OF HER OMISSIONS WHICH DO NOT APPEAR TO HAVE BEEN ATTENDED BY BAD FAITH OR FRAUDULENT INTENT.— Simple Negligence is akin to Simple Neglect of Duty, which is a less grave offense punishable with suspension without pay for one (1) month and one (1) day to six (6) months, for the first offense. Since the penalty of suspension can no longer be imposed on account of petitioner's resignation, and considering that she readily admitted her omissions which do not appear to have been attended by any bad faith or fraudulent intent, the Court finds that the penalty of fine in the amount equivalent to one (1) month and one (1) day of petitioner's last salary is reasonable and just under the premises.

APPEARANCES OF COUNSEL

Herrera Batacan & Associates Law Firm for petitioner.
The Solicitor General for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a Petition[1] for review on *certiorari* assailing the Decision[2] dated August 27, 2014 and the Resolution[3] dated October 22, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 122851, which dismissed petitioner Concepcion C. Daplas' (petitioner) petition for review, thereby upholding the Joint

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[1] *Id.* at 41-69.

[2] *Id.* at 12-32. Penned by Associate Justice Eduardo B. Peralta, Jr. with Associate Justices Magdangal M. De Leon and Stephen C. Cruz concurring.

[3] *Id.* at 34-37.

Decision[4] dated May 8, 2007 of the Office of the Ombudsman (Ombudsman) in the administrative aspects of the cases, docketed as OMB-C-A-05-0234-E and OMB-C-A-06-0354-G. The Ombudsman found petitioner guilty of Dishonesty, Grave Misconduct, and violation of Section 8 (A) of Republic Act No. (RA) 6713, and imposed the penalty of dismissal from service, and all its accessory penalties, without prejudice to criminal prosecution.

The Facts

Petitioner joined the government service as a casual clerk for the Municipal Treasurer of Kawit, Cavite sometime in 1968, and had held various posts until she was appointed as the Pasay City Treasurer on May 19, 1989, with a gross monthly salary of ₱28,722.00. At the time material to the complaints, petitioner was concurrently holding the position of Officer-in-Charge, Regional Director of the Bureau of Local Government Finance (BLGF) in Cebu City.[5]

Two (2) separate complaints were filed against petitioner by the Department of Finance-Revenue Integrity Protection Service (DOF-RIPS) and the Field Investigation Office (FIO) of the Office of the Ombudsman (Ombudsman; respondents) for averred violations[6] of Sections 7 and 8 of RA 3019,[7] Section 8 (A) of RA 6713,[8] Section 2 of RA

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[4] *Id*. at 97-133. Penned by Graft Investigation and Prosecution Officer Leilani P. Tagulao-Marquez, recommended for approval by Assistant Ombudsman Pelagio S. Apostol, and approved by Deputy Ombudsman for Luzon Mark E. Jalandoni.

[5] *Id*. at 98-99.

[6] *Id*. at 98.

[7] Entitled "ANTI-GRAFT AND CORRUPT PRACTICES ACT," as amended (August 17, 1960).

[8] Entitled "AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES,"otherwise known as the "CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES" (February 20, 1989).

1379,[9] Article 183[10] of the Revised Penal Code (RPC), and Executive Order No. (EO) 6[11] dated March 12, 1986,[12] constituting Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, arising out of her failure to disclose the true and detailed statement of her assets, liabilities, and net worth, business interests, and financial connections, and those of her spouse in her Statements of Assets, Liabilities, and Net Worth (SALNs).[13] In particular, petitioner: (*1*) failed to declare (*a*) a 1993 Mitsubishi Galant sedan with Plate No. TBH-238 (Galant sedan) registered under the name of her late husband with an estimated value of ₱250,000.00; (*b*) her stock subscription in KEI Realty and Development Corp. (KEI) valued at ₱1,500,000.00 with a total paid up amount of ₱ 800,000.00;[14] and (*c*) several real properties in Cavite[15] (which had been the subject of a previous administrative complaint against her that had been dismissed[16]); and (*2*) traveled multiple

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[9] Entitled "AN ACT DECLARING FORFEITURE IN FAVOR OF THE STATE ANY PROPERTY FOUND TO HAVE BEEN UNLAWFULLY ACQUIRED BY ANY PUBLIC OFFICER OR EMPLOYEE AND PROVIDING FOR THE PROCEEDINGS THEREFOR" (June 18, 1955).

[10] Article 183. *False testimony in other cases and perjury in solemn affirmation.* — The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon any person who, knowingly make untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein.

[11] Entitled "PROVIDING PROCEDURES IN THE DISPOSITION OF REQUESTS OF GOVERNMENT OFFICIALS AND EMPLOYEES FOR AUTHORITY TO TRAVEL ABROAD" issued by former President Corazon C. Aquino on March 12, 1986.

[12] *Rollo*, pp. 13-14.

[13] *Id*. at 99 and 112.

[14] *Id*. at 102-103.

[15] *Id*. at 99-100.

[16] *Id*. at 113-114.

times abroad without securing a travel authority, which cast doubt on her real net worth and actual source of income considering her modest salary.[17]

For her part, petitioner insisted that she acquired her properties through lawful means, and maintained that she was not totally dependent on her salary to finance the said acquisitions.[18] She alleged that: (*a*) her late husband purchased the Galant sedan out of his personal money, hence, the same did not form part of their conjugal properties;[19] (*b*) she had already divested her interest in KEI in 1998, along with her husband, but her husband and children reacquired their respective shares sometime in 2003;[20] and (*c*) her travels were sponsored by the government or by her relatives abroad.[21]

The Ombudsman Ruling

In a Joint Decision[22] dated May 8, 2007, the Ombudsman found petitioner guilty of Dishonesty, Grave Misconduct, and violation of Section 8 (A) of RA 6713, and imposed the penalty of Dismissal, and its accessory penalties, without prejudice to criminal prosecution.[23] It observed that petitioner committed perjury under Article 183 of the RPC when she failed to declare in her SALNs for 1997 to 2003 the Galant sedan, and her business interest in KEI in her 1997 SALN, which is sufficient basis to hold her liable for Dishonesty and Grave Misconduct.[24] Likewise, it found her liable for violation of Section 8 of RA 6713 for her failure to disclose the said assets despite the legal obligation to do so.[25]

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[17] *Id*. 104-105.

[18] *Id*.at 106.

[19] *Id*. at 122.

[20] *Id*. at 108-109.

[21] *Id*. at 106.

[22] *Id*. at 97-133.

[23] *Id*. at 131-132.

[24] *Id*. at 125-126.

[25] *Id*. at 127.

However, the Ombudsman found respondents to have failed to substantiate the charges that: (*a*) petitioner's numerous foreign travels were indicia of her acquisition of unlawful wealth;[26] and (*b*) KEI was put up as a subterfuge for petitioner's ill-gotten wealth.[27]

Aggrieved, petitioner filed a motion for reconsideration, which was denied in a Joint Order[28] dated May 30, 2011, prompting her to elevate her case before the Court of Appeals (CA), docketed as CA-G.R. SP No. 122851.

The CA Ruling

In a Decision[29] dated August 27, 2014, the CA dismissed the petition, holding that the Ombudsman's ruling was sufficiently supported by substantial evidence.[30] It found that petitioner's failure to declare all her assets and business interests constituted Dishonesty, Grave Misconduct, and a violation of Section 8 (A) of RA 6713.[31] It gave no credence to her defense of good faith considering that she knew of the said assets and gave no justification for their exclusion in her SALNs.[32] Moreover, it ruled that her resignation from the government service did not render the Ombudsman ruling moot.[33]

Dissatisfied, petitioner moved for reconsideration, which the CA denied in a Resolution[34] dated October 22, 2015; hence, the instant petition.

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[26] *Id*. at 119.

[27] *Id*. at 128.

[28] *Id*. at 134-149. Penned by Graft Investigation and Prosecution Officer Leilani P. Tagulao-Marquez, reviewed by Director Nellie P. Boguen-Golez, recommended by Assistant Ombudsman Marilou B. Ancheta-Mejica, and approved by Ombudsman Conchita Carpio-Morales.

[29] *Id*. at 12-32.

[30] *Id*. at 23.

[31] *Id*. at 26.

[32] *Id*. at 29-30.

[33] *Id*. at 22-23.

[34] *Id*. at 34-37.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA correctly affirmed the Joint Decision of the Ombudsman finding petitioner liable for Dishonesty, Grave Misconduct, and violation of Section 8 (A) of RA 6713, and imposing on her the corresponding penalties.

The Court's Ruling

The petition is partly meritorious.

The **requirement of filing a SALN** is enshrined in no less than the 1987 Constitution[35] in order to promote transparency in the civil service, and operates as a **deterrent against government officials bent on enriching themselves through unlawful means**.[36] By mandate of law, *i.e.*, RA 6713, it behooves every government official or employee to accomplish and submit a sworn statement completely disclosing his or her assets, liabilities, net worth, and financial and business interests, including those of his/her spouse and unmarried children under eighteen (18) years of age living in their households,[37] in order **to suppress any questionable accumulation of wealth** because the latter usually results from non-disclosure of such matters.[38]

In the present case, it is undisputed that petitioner failed to declare some properties in her SALNs for the years 1997 to 2003 despite the legal obligation to do so. Both the Ombudsman and the CA held that such omission provides substantial basis

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[35] Section 17, Article XI of the 1987 Constitution provides:

Section 17. A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.

[36] *Gupilan-Aguilar v. Office of the Ombudsman*, 728 Phil. 210, 232 (2014).

[37] See Section 8 of RA 6713.

[38] *Office of the Ombudsman v. Racho*, 656 Phil. 148, 161 (2011).

to hold petitioner liable for the administrative offenses of Dishonesty, Grave Misconduct, and violation of Section 8 (A) of RA 6713, warranting the supreme penalty of dismissal from service, with all its accessory penalties.

The Court disagrees.

Records reveal that the element of **intent to commit a wrong** required under both the administrative offenses of Dishonesty and Grave Misconduct[39] are lacking to warrant petitioner's dismissal from service.

Dishonesty is committed when an individual *intentionally* makes a false statement of any material fact, practices or attempts to practice any deception or fraud in order to secure his examination, registration, appointment, or promotion. It is understood to imply the disposition to lie, cheat, deceive, betray or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; and the lack of fairness and straightforwardness.[40]

On the other hand, **misconduct is *intentional* wrongdoing or *deliberate* violation of a rule of law or standard of behavior.** To constitute an administrative offense, misconduct **should relate to or be connected with the performance of the official functions and duties of a public officer. In grave misconduct**, as distinguished from simple misconduct, **the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be manifest.**[41] Without any of these elements, the transgression of an established rule is properly characterized as simple misconduct only.[42] Most importantly, without a **nexus between the act complained of and the discharge of duty**, the charge of grave misconduct shall necessarily fail.[43]

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[39] *Id*.

[40] *Id*.

[41] *Imperial, Jr. v. Government Service Insurance System*, 674 Phil. 286, 296 (2011).

[42] *Id.*

[43] *Gupilan-Aguilar v. Office of the Ombudsman, supra* note 36.

Indeed, the failure to file a truthful SALN puts in doubt the integrity of the public officer or employee, and would normally amount to dishonesty. It should be emphasized, however, that mere non-declaration of the required data in the SALN does not automatically amount to such an offense. Dishonesty requires malicious intent to conceal the truth or to make false statements. In addition, **a public officer or employee becomes susceptible to dishonesty only when such non-declaration results in the accumulated wealth becoming manifestly disproportionate to his/her income, and income from other sources, and he/she fails to properly account or explain these sources of income and acquisitions.**[44]

Here, the Court finds that there is no substantial evidence of intent to commit a wrong, or to deceive the authorities, and conceal the other properties in petitioner's and her husband's names. Petitioner's failure to disclose in her 1997 SALN her business interest in KEI is not a sufficient badge of dishonesty in the absence of bad faith, or any malicious intent to conceal the truth or to make false statements. Bad faith does not simply connote bad judgment or negligence. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill-will for ulterior purposes.[45]

Notably, petitioner readily admitted in her Counter-Affidavit her business interest in KEI in 1997,[46] which belied any malicious intent to conceal. While concededly, the omission would increase her net worth for the year 1997, the Court observes that the Ombudsman declared respondent's evidence insufficient to warrant a finding that petitioner had any unexplained wealth.[47] On the contrary, it found that her children have the financial capacity to put up KEI.[48]

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[44] *Id.* at 234.

[45] See *Monticalbo v. Maraya, Jr.*, 664 Phil. 1, 9 (2011).

[46] *Rollo*, pp. 123-124.

[47] *Id.* at 130.

[48] *Id.* at 129.

It should be emphasized that **the laws on SALN aim to curtail the acquisition of unexplained wealth.** Thus, in several cases[49] **where the source of the undisclosed wealth was properly accounted for, the Court deemed the same an "explained wealth" which the law does not penalize.** Consequently, absent any intent to commit a wrong, and having accounted for the source of the "undisclosed wealth," as in this case, petitioner cannot be adjudged guilty of the charge of Dishonesty; but at the most, of mere negligence for having failed to accomplish her SALN properly and accurately.

Negligence is the omission of the diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time, and of the place**. In the case of public officials, there is negligence when there is a breach of duty or failure to perform the obligation**, and there is gross negligence when a breach of duty is flagrant and palpable.[50] **An act done in good faith, which constitutes only an error of judgment and for no ulterior motives and/or purposes,**[51] **as in the present case, is merely Simple Negligence.**

In the same vein, petitioner's failure to declare the Galant sedan in her SALNs from 1997 to 2003 stemmed from the fact that the same was registered in her husband's name, and purportedly purchased out of his personal money.[52] While such bare allegation is not enough to overthrow the presumption that the car was conjugal, neither is there sufficient showing that petitioner was motivated by bad faith

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[49] *Navarro v. Office of the Ombudsman*, G.R. No. 210128, August 17, 2016; *Gupilan-Aguilar v. Office of the Ombudsman*, *supra* note 36; *Ombudsman v. Racho*, *supra* note 38.

[50] *Navarro v. Office of the Ombudsman*, *supra* note 49; *Office of the Ombudsman v. Bernardo*, 705 Phil. 524, 543 (2013); *Pleyto v. PNP-Criminal Investigation & Detection Group*, 563 Phil. 842, 910 (2007).

[51] *Pleyto v. PNP-Criminal Investigation & Detection Group*, *supra* note 50.

[52] *Rollo*, p. 122.

in not disclosing the same. In fact, the Ombudsman conceded that petitioner's husband was financially capable of purchasing the car,[53] negating any "unexplained wealth" to warrant petitioner's dismissal due to Dishonesty.

Likewise, the charge of Grave Misconduct against petitioner must fail. Verily, the omission to include the subject properties in petitioner's SALNs, by itself, does not amount to Grave Misconduct, in the absence of showing that such omission had, in some way, hindered the rendition of sound public service for there is no direct relation or connection between the two.[54]

Accordingly, the Court finds no reason to hold petitioner liable for the charges of Dishonesty and Grave Misconduct, but declares her guilty, instead, of Simple Negligence in accomplishing her SALN. Simple Negligence is akin to Simple Neglect of Duty,[55] which is a less grave offense punishable with suspension without pay for one (1) month and one (1) day to six (6) months, for the first offense.[56] Since the penalty of suspension can no longer be imposed on account of petitioner's resignation,[57] and considering that she readily admitted her omissions which do not appear to have been attended by any bad faith or fraudulent intent,[58] the Court finds that the penalty of fine in the amount equivalent to

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[53] *Id*.

[54] *Gupilan-Aguilar v. Office of the Ombudsman,* supra note 36 at, 231-232.

[55] See *Reyes v. Cabusao*, 502 Phil. 1, 7 (2005).

[56] See Section 46 (D) (1) of the Revised Rules on Administrative Cases in the Civil Service (RRACCS).

[57] *Rollo*, pp. 22-23.

[58] Section 48 of the RRACCS grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty.

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one (1) month and one (1) day[59] of petitioner's last salary is reasonable and just under the premises.

WHEREFORE, the petition is **PARTLY GRANTED**. The assailed Decision dated August 27, 2014 and the Resolution dated October 22, 2015 of the Court of Appeals in CA-G.R. SP No. 122851 are hereby **SET ASIDE.** A new one is **ENTERED** finding petitioner Concepcion C. Daplas **GUILTY** of **SIMPLE NEGLIGENCE** in accomplishing her Statements of Assets, Liabilities and Net Worth for the years 1997 to 2003, and is meted a fine in the amount equivalent to one (1) month and one (1) day of her last salary.

SO ORDERED.

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

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[59] Section 47 (2) of the RRACCS reads:

Section 47. *Penalty of Fine*. – The following are the guidelines for the penalty of fine:

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2. The payment of penalty of fine in lieu of suspension shall be available in Grave, Less Grave and Light Offenses where the penalty imposed is for six (6) months or less **at the ratio of one (1) day of suspension from the service to one (1) day fine**[.] (Emphasis supplied)

In relation thereto, Section 49 of the RRACCS provides:

Section 49. *Manner of Imposition*. – When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

a. **The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.** (Emphasis supplied)

EN BANC

[A.C. No. 9209. April 18, 2017]

NENITA DE GUZMAN FERGUSON, *complainant, vs.* **ATTY. SALVADOR P. RAMOS,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; NOTARIZING A DEED OF SALE WITHOUT THE PRESENCE OF THE PARTIES THERETO VIOLATES THE NOTARIAL LAW AND THE RULE ON NOTARIAL PRACTICE AS WELL AS RULE 1.01 AND CANON 1 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— A perusal of the record would reveal that Douglas, one of the parties in the deed of sale, was not in the Philippines on May 12, 2009, the day the "genuine" deed of sale was notarized. Complainant presented a copy of Douglas' passport indicating that he entered the Philippines only on May 26, 2001 and left on June 12, 2001. This substantially established that indeed Douglas could not have personally appeared before Atty. Ramos when he notarized the deed. x x x Not only did Atty. Ramos fail to comply with the Rule on Notarial Practice when he notarized the deed of sale without the presence of the parties but he likewise violated Canon 1 of the Code of Professional Responsibility which obliges a lawyer to uphold the Constitution, obey the laws of the land and promote respect for the law and legal processes; and Rule 1.01, Canon 1 of the Code of Professional Responsibility which proscribes a lawyer from engaging in any unlawful, dishonest, immoral and deceitful conduct. As a lawyer commissioned as notary public, Atty. Ramos was mandated to exercise the function of his office and must observe with utmost care the basic formalities of his office and requisites in the performance of his duties. When Atty. Ramos affixed his signature and notarial seal on the deed of sale, he led us to believe that the parties personally appeared before him and attested to the truth and veracity of the contents thereof. His conduct was fraught with dangerous possibilities considering the conclusiveness on the due execution of a document that our courts and the public accord on notarized documents. Certainly, Atty. Ramos failed to exercise the

functions of the office and to comply with the mandates of the law.

2. ID.; ID.; ID.; PENALTY IS SUSPENSION FROM THE PRACTICE OF LAW FOR SIX (6) MONTHS, REVOCATION OF NOTARIAL COMMISSION AND PERMANENT BAR FROM BEING COMMISSIONED AS NOTARY PUBLIC.— [F]inding Atty. Salvador P. Ramos **GUILTY** of violating the Rule on Notarial Practice and Rule 1.01 and Canon 1 of the Code of Professional Responsibility, the Court hereby **SUSPENDS** him from the practice of law for six (6) months; **REVOKES** his notarial commission, effective immediately; and **PERMANENTLY BARS** him from being commissioned as notary public, with a **STERN WARNING** that a repetition of the same or similar conduct will be dealt with more severely.

APPEARANCES OF COUNSEL

Pete S. Principe for respondent.

D E C I S I O N

***PER CURIAM*:**

Before the Court is the Complaint-Affidavit,[1] filed by Nenita De Guzman Ferguson *(complainant),* seeking the disbarment of Atty. Salvador P. Ramos *(Atty. Ramos)* for falsification, violation of notarial law and engaging in private practice while employed in the government service.

The Antecedents

Complainant alleged that on November 25, 2007, she purchased a house and lot located in San Rafael, Bulacan, for the sum of ₱800,000.00; that without her knowledge, the seller obtained a Certificate of Land Ownership Award *(CLOA)* mainly to transfer the title of the said property to her name; that the

[1] *Rollo*, pp. 3-11.

seller was unaware that the said CLOA was void *ab initio* as the subject land was not an agricultural land and there existed a 10-year prohibition to transfer the subject land; that in 2009, complainant instituted a petition for the cancellation of the CLOA before the DAR Office; that the defendants were represented by Atty. Ramos, who was the Chief Legal Officer of DAR-Provincial Office in Bulacan; that complainant withdrew the petition before the DAR and filed the case before the Regional Trial Court, Branch 12, Malolos City *(RTC)*; that upon receipt of the Answer, complainant found out that it was strikingly similar to the one filed by the defendants in the DAR, which was prepared by Atty. Ramos; that complainant discovered that the Deed of Sale,[2] dated April 24, 2009, which became the basis of the transfer of title was fraudulently altered as it only covered the sale of the land, not the house and lot, and the price indicated was only ₱188,340.00, not the amount of ₱800,000.00[3] that she actually paid; that her signature and that of her husband, Douglas Ferguson *(Douglas),* were forged; that Atty. Ramos notarized the deed of sale without their presence; and that complainant and her husband neither appeared, executed nor acknowledged any document before Atty. Ramos as they never met him in person.

In his Comment,[4] Atty. Ramos denied that he represented the defendants in the case before the DAR but he admitted that he notarized their Answer. With respect to the charge of falsification of the April 24, 2009 Deed of Sale and the notarization of the aforementioned deed, Atty. Ramos likewise denied any participation and countered that his signature as a notary public was forged. Atty. Ramos, nonetheless, admitted that he notarized the "genuine" Deed of Sale,[5] dated May 12, 2009, executed between vendor Alfredo Inosanto, and vendees

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[2] Annex "M" for Complainant and Annex "9-A" for the respondent, *Id*. at 104-105.

[3] *Id*. at 4.

[4] *Id*. at 35-50.

[5] Annex "14", *id*. at 129.

complainant and her spouse, involving the same property for the amount of ₱300,000.00.[6] Atty. Ramos surmised that whoever benefited from such dastardly act could be the culprit in the falsification of the document as the forged deed of sale which indicated a lesser purchase price was the one presented in the Registry of Deeds of Bulacan in order to evade payment of a higher capital gains tax.

In its Resolution,[7] dated February 29, 2012, the Court referred the complaint to the Integrated Bar of the Philippines *(IBP)* for investigation, report and recommendation.

The case was then set by the Commission on Bar Discipline *(CBD)* of the IBP for mandatory conference. Thereafter, parties were required to submit their respective position papers.

In its Report and Recommendation,[8] dated November 21, 2014, the CBD found Atty. Ramos guilty of violating the law on notarial practice and recommended that he be suspended from the practice of law for a period of one *(1)* year and, in case he held a commission as a notary public, that it be revoked and that he be disqualified to act as a notary public for a period of two *(2)* years to be counted after his suspension. The CBD stated that the defense of forgery, without any corroborative evidence, was not credible. As to the charge that of engaging in a private practice while employed in the government service against Atty. Ramos, the CBD opined that it should be addressed to the Civil Service Commission for the determination of his appropriate administrative liability.

In its Notice of Resolution No. XXI-2015-458,[9] dated June 6, 2015, the IBP-Board of Governors adopted and approved with modification the report and recommendation of the CBD, as follows:

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[6] *Id*. at 45.

[7] *Id*. at 140.

[8] *Id*. at 259-264.

[9] *Id*. at 257-258.

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", finding the recommendation to be fully supported by the evidence on record and applicable laws and Respondent's notarization of a document in the absence of the parties' in violation of the 2004 Rules on Notarial Practice. Thus, Respondent Atty. Salvador P. Ramos' notarial commission, if presently commissioned, is immediately REVOKED. Furthermore, he is DISQUALIFIED from being commissioned as a Notary Public for two *(2)* years and is SUSPENDED from the practice of law for six *(6)* months.

The Court agrees with the findings of the IBP but differs on the imposed penalty.

Section 1, Public Act No. 2103, otherwise known as the Notarial Law states:

> The acknowledgment shall be before a notary public or an officer duly authorized by law of the country to take acknowledgements of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgment shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, acknowledged that the same is his free act and deed. The certificate shall be made under the official seal, if he is required by law to keep a seal, and if not, his certificate shall so state.

The importance of the affiant's personal appearance was further emphasized in Section 2 (b), Rule IV of the Rules on Notarial Practice of 2004 which specifically provides that:

> A person shall not perform a notarial act if the person involved as signatory to the instrument or document –
>
> (1) is not in the notary's presence personally at the time of the notarization; and
>
> (2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

The afore-quoted rules clearly mandate that a notary public, before notarizing a document, should require the presence of the very person who executed the same. Thus, he certifies that it was the same person who executed and personally appeared before him to attest to the contents and truth of what were stated therein.[10] The presence of the parties to the deed is necessary to enable the notary public to verify the genuineness of the signature of the affiant.[11]

In the present case, Atty. Ramos denied having notarized the April 24, 2009 deed of sale and claimed that his signature was forged. He even alluded that the person who benefited from it could be the forger as the capital gains tax liability was reduced. He, nonetheless, admitted notarizing the "genuine" deed of sale, dated May 12, 2009.

Regardless of who the culprit was and the motive of such forgery, Atty. Ramos cannot be exonerated from liability. A perusal of the record would reveal that Douglas, one of the parties in the deed of sale, was not in the Philippines on May 12, 2009, the day the "genuine" deed of sale was notarized. Complainant presented a copy of Douglas' passport indicating that he entered the Philippines only on May 26, 2001 and left on June 12, 2001. This substantially established that indeed Douglas could not have personally appeared before Atty. Ramos when he notarized the deed.

Moreover, an examination of the April 24, 2009 and May 12, 2009 deeds of sale disclosed that both documents bore the same document number, page number and book number of the notarial registry of Atty. Ramos. If, indeed, the April 24, 2009 deed of sale, which was issued earlier was forged, how would the purported culprit know the details of Atty. Ramos' notarial registry?

It must be emphasized that notarization is not an empty, meaningless and routinary act. It is imbued with public interest

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[10] *Bautista v. Bernabe*, 517 Phil. 236, 240 (2006).

[11] *Cabanilla v. Cristal-Tenorio*, 461 Phil. 1, 11 (2003).

and only those who are qualified and authorized may act as notaries public.[12] In the case of *Gonzales v. Ramos*,[13] the Court explained the significance of the act of notarization, thus:

> By affixing his notarial seal on the instrument, the respondent converted the Deed of Absolute Sale, from a private document into a public document. Such act is no empty gesture. The principal function of a notary public is to authenticate documents. When a notary public certifies to the due execution and delivery of a document under his hand and seal, he gives the document the force of evidence. Indeed, one of the purposes of requiring documents to be acknowledged before a notary public, in addition to the solemnity which should surround the execution and delivery of documents, is to authorize such documents to be given without further proof of their execution and delivery. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgement executed before a notary public and appended to a private instrument. Hence, a notary public must discharge his powers and duties, which are impressed with public interest, with accuracy and fidelity.

Not only did Atty. Ramos fail to comply with the Rule on Notarial Practice when he notarized the deed of sale without the presence of the parties but he likewise violated Canon 1 of the Code of Professional Responsibility which obliges a lawyer to uphold the Constitution, obey the laws of the land and promote respect for the law and legal processes; and Rule 1.01, Canon 1 of the Code of Professional Responsibility which proscribes a lawyer from engaging in any unlawful, dishonest, immoral and deceitful conduct.[14]

As a lawyer commissioned as notary public, Atty. Ramos was mandated to exercise the function of his office and must observe with utmost care the basic formalities of his office and requisites in the performance of his duties.[15] When Atty.

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[12] *Tan Tiong Bio v. Gonzalez*, 530 Phil. 748, 756 (2007).

[13] 499 Phil. 345, 350 (2005).

[14] *Ocampo-Ingcoco v. Atty. Yrreverre, Jr.,* 458 Phil. 803, 813 (2003).

[15] *Cabanilla v. Atty. Cristal-Tenorio*, *supra* note 11.

Ramos affixed his signature and notarial seal on the deed of sale, he led us to believe that the parties personally appeared before him and attested to the truth and veracity of the contents thereof. His conduct was fraught with dangerous possibilities considering the conclusiveness on the due execution of a document that our courts and the public accord on notarized documents.[16] Certainly, Atty. Ramos failed to exercise the functions of the office and to comply with the mandates of the law.

In the case of *Santuyo v. Atty. Hidalgo*,[17] the respondent lawyer similarly denied having notarized the subject deed of sale. The Court found him negligent not only in the supposed notarization but in allowing the office secretaries to make the necessary entries in his notarial registry which was supposed to be done and kept by him alone. He was suspended from his commission as notary public and was disqualified from being commissioned as notary public for a period of two years.

In the case of *Ocampo-Ingcoco v. Atty. Yrreverre, Jr.*,[18] the respondent lawyer was suspended from the practice of law for a period of six *(6)* months for notarizing a document without the appearance of the parties. The Court held that a notary public should not notarize a document unless the persons who signed it are the very same persons who executed and personally appeared before him to to attest to the truth of the contents therein.

In line with these cases, the Court finds the suspension of Atty. Ramos for six (6) months inn order.

With respect to the allegation that Atty. Ramos was engaged in a private practice while employed in the government service, the Court agrees with the CBD that the issue should be brought before the Civil Service Commission for the determination of his appropriate administrative liability, if any.

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[16] *Bautista v. Atty. Bernabe*, 517 Phil. 236, 240 (2006).

[17] 489 Phil. 257 (2005).

[18] *Supra* note 14.

Finally, this Court cannot ignore the averments of Atty. Ramos that there were two (2) deeds of sale covering Transfer Certificate of Title No. CLOA-T-15831. One was the April 24, 2009 Deed of Sale which was presented to the Registry of Deeds of Bulacan, and the other one was the May 12, 2009 Deed of Sale which was kept on file at the Notarial Section of the RTC. Both deeds were registered in the National Registry of Atty. Ramos with document number 354, page number 71 and Book VII series of 2009. Because of this irregularity, the Court deems it proper to refer this matter to the Bureau of Internal Revenue for the assessment of the correct tax and for investigation for possible prosecution of the criminal liability of the culprits under the National Internal Revenue Code.

WHEREFORE, finding Atty. Salvador P. Ramos **GUILTY** of violating the Rule on Notarial Practice and Rule 1.01 and Canon 1 of the Code of Professional Responsibility, the Court hereby **SUSPENDS** him from the practice of law for six (6) months; **REVOKES** his notarial commission, effective immediately; and **PERMANENTLY BARS** him from being commissioned as notary public, with a **STERN WARNING** that a repetition of the same or similar conduct will be dealt with more severely.

Let copies of this decision be furnished the Office of the Bar Confidant to be attached to the personal record of Atty. Salvador P. Ramos; the Office of the Court Administrator for dissemination to all lower courts; and the Integrated Bar of the Philippines, for proper guidance and information.

The Civil Service Commission and the Bureau of Internal Revenue should likewise be given copies of this decision for their approriate actions.

SO ORDERED.

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

Bersamin, J., no part.

EN BANC

[A.M. No. RTJ-09-2212. April 18, 2018]
(Formerly A.M. No. 09-11-446-RTC)

THE OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE JUSTINO G. AVENTURADO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; FAILURE TO DECIDE CASES THAT WERE THE SUBJECT OF REQUESTS FOR EXTENSION OF TIME TO DISPOSE CONSTITUTES GROSS INEFFICIENCY; FINE OF ₱100,000.00, IMPOSED.— [R]espondent Judge attempted to explain his failure to resolve such cases by citing his service in several branches of the Regional Trial Court in Davao. Yet, such explanation did not exculpate him because the additional court assignments or designations imposed upon him as a judge did not make him less liable for the delays. In taking his oath of office as a judicial officer, he precisely swore to perform his duties efficiently in order not to prejudice the litigants. Efficiency thus became his professional commitment for as long as he was on the Bench. He also well knew that Section 15(1), Article VIII of the 1987 Constitution mandated that cases or matters filed in the lower courts must be decided or resolved within three months from the time they are submitted for decision or resolution. He was further aware of Rule 3.05, Canon 3 of the *Code of Judicial Conduct* by which he was expressly required as a judge to promptly dispose of court business, and to decide cases within the prescribed periods. He was expected to have become apprised that any delays in the disposition of cases would surely undermine the people's faith and confidence in the Judiciary. Accordingly, he should have been imbued with that high sense of duty and responsibility in the discharge of his duties and obligations to promptly administer justice while he sat as judge. His failure to promptly dispose of court business, and to decide cases within the prescribed periods efficiently constituted gross inefficiency and warranted the imposition of

the condign administrative sanction on him. x x x Consequently, the recommendation of the OCA of imposing a fine of ₱100,000.00 as sanction for his failure to decide the cases that were the subject of his requests for extension of time to decide to be deducted from his accrued leave credits becomes just and reasonable.

2. ID.; ID.; GROSS VIOLATION OF ADMINISTRATIVE CIRCULAR NO. 43-2004, COMMITTED; FINE OF ₱100,000.00 LIKEWISE IMPOSED.— Administrative Circular No. 43-2004 required, among others, that the judge applying for optional retirement should already cease working and discharging his functions as judge even "[i]f on the date specified in the application as the date of the effectivity of the [optional] retirement, [he] has not yet received any notice of approval or denial of his application." In his case, respondent Judge signified the effectivity of his optional retirement to be January 30, 2009, although he subsequently requested an extension until February 20, 2009 to enable him to promulgate decisions he had supposedly prepared in the last week of January 2009. The OCA found and reported that in the period in question respondent Judge decided 10 civil cases and four criminal cases assigned in Branch 1 of the Regional Trial Court in Tagum, whereby he acquitted the accused; that he dismissed 10 criminal cases and acquitted the accused in one criminal case assigned in Branch 2 of the Regional Trial Court in Tagum; that he decided one criminal case assigned in Branch 5 of the Regional Trial Court in Mati on January 25, 2009 in which he found the accused guilty of murder, but the decision was not promulgated because of the intervening designation of another judge as assisting judge of that branch; that he prepared the decision in another criminal case acquitting the accused, but the decision was not promulgated because of the filing of a motion to suspend the promulgation; and that he acquitted the accused in another criminal case on February 2, 2009. He thereby clearly violated the conditions imposed by the Court in Administrative Circular No. 43-2004. It is but appropriate and necessary, therefore, that the Court adopts the findings and recommendation of the OCA to severely sanction respondent Judge for violating Administrative Circular No. 43-2004. For this purpose, the amount of ₱100,000.00 as fine will serve as sufficient sanction.

D E C I S I O N

***PER CURIAM*:**

Failing to comply with the mandate to decide cases within the period prescribed by the Constitution, the laws, the *Rules of Court* and the administrative circulars and guidelines constitutes gross inefficiency and incompetence, for which the judge may be held to account. Retirement from the Bench does not exempt the judge from liability for disobeying or ignoring the mandate.

Antecedents

In view of the optional retirement of respondent Judge, the Office of the Court Administrator (OCA) conducted separate judicial audits on Branch 1 and Branch 2 of the Regional Trial Court in Tagum, Davao del Norte, and on Branch 5 of the Regional Trial Court in Mati, Davao Oriental, the courts in which he presided. On November 6, 2009, the OCA submitted a consolidated report on the judicial audits to Chief Justice Reynato S. Puno.[1]

Accordingly, on December 16, 2009, the Court resolved to docket the consolidated report as an administrative complaint against respondent Judge for: (1) gross irregularity and serious misconduct, and gross inefficiency and incompetence for failure to decide the 12 cases that were the subjects of his requests for extension of time to resolve; and (2) gross violation of Administrative Circular No. 43-2004 dated September 6, 2004 (*Adopting New Guidelines on the Filing of Applications for Optional Retirement*) for continuing to function as a judge beyond the stated effectivity period of his optional retirement.[2]

On April 9, 2010, respondent Judge wrote to the Members of the First Division of the Court in an attempt to get their sympathy.[3] Under the resolution promulgated on September 6, 2010,[4] the Court

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[1] *Rollo,* pp. 1-37.

[2] *Id*. at 217-237.

[3] *Id*. at 279-282.

[4] *Id*. at 294-295.

treated this communication as his comment on the administrative complaint, and referred the entire matter to the OCA for evaluation, report and recommendation.

Findings and Recommendations of the OCA

Through its memorandum[5] dated December 2, 2010, the OCA summarized the charges against respondent Judge, and submitted the following findings and recommendations on the disciplinary actions to be taken, to wit:

x x x x x x x x x

Regarding the first charges, petitions for extension of time to decide cases were filed by Judge Aventurado. These are Crim. Case No. 11757 (A.M. No. 05-4-257-RTC), Crim. Case No. 13268 (A.M. No. 05-12-771-RTC), Civil Case No. 3619 (A.M. No. 07-2-107-RTC), Civil Case No. 3207 (A.M. No. 08-3-117-RTC), and Civil Case No. 3718 (A.M. No. 09-1-34-RTC) pending with the Regional Trial Court, Branch 2, Tagum, Davao del Norte and Civil Case No. 3285 (A.M. No. 08-4-197-RTC), Crim. Case No. 12309 (A.M. No. 08-6-341-RTC), Crim. Case No. 13717 (A.M. No. 08-10-602-RTC), Crim. Case No. 3718 (A.M. No. 08-10-603-RTC), Crim. Case No. 13717 (A.M. No. 08-11-655-RTC), Crim. Case No. 4067 (A.M. No. 08-12-692-RTC) and Crim. Case No. 3958 (A.M. 08-12-693-RTC) pending with the Regional Trial Court, Branch 5, Mati, Davao Oriental. These petitions were granted but despite the expiration of the periods Judge Aventurado failed to decide the said cases.

x x x x x x x x x

Judge Aventurado is likewise charged with gross violation of Administrative Circular No. 43-2004 dated September 6, 2004 (Adopting New Guidelines on the Filing of Applications for Optional Retirement) which provides that "if on the date specified in the application as the date of the effectivity of the retirement, the applicant has not yet received any notice of approval or denial of his application, he shall cease working and discharging his functions unless directed otherwise.["]

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[5] *Id.* at 296-301.

Judge Aventurado filed his application for optional retirement effective on January 30, 2009 but requested for an extension to February 20, 2009 for him to promulgate decisions resolved within the last week of January 2009.

During said period, Judge Aventurado, in Regional Trial Court, Branch 1, Tagum, decided ten (10) civil cases and four (4) criminal cases [15264, 13073, 13074, 12534] wherein the accused in all the said cases were acquitted. In RTC, Branch 2, Tagum, Judge Aventurado dismissed ten (10) criminal cases [15820, 15821, 15954, 15955, 15956, 15889, 15890, 16338, 16267, 16375] and acquitted accused in Crim. Case No. 11903. In RTC, Branch 5, Mati, Judge Aventurado decided Crim Case No. 3958 on January 25, 2009 finding the accused guilty of Murder. The decision thereon was not promulgated with the assumption of Judge Kahulugan who was designated as assisting judge of the branch. Judge Kahulugan rendered a decision on the same case on February 26, 2009 likewise finding the accused guilty as charged. Also, a decision in Crim. Case No. 4067 was prepared by Judge Aventurado acquitting the accused. The same was likewise not promulgated considering the Motion to suspend its promulgation. In connection therewith, Judge Kahulugan issued an Order dated May 25, 2009 requiring the parties to manifest within fifteen (15) days their desire as to who shall decide this case. On February 2, 2009, Judge Aventurado acquitted the accused in Crim. Case No. 4238.

x x x x x x x x x

In view of the foregoing, it is respectfully recommended that Judge Justino G. Aventurado (Ret.), Regional Trial Court, Branch 2, Tagum City, Davao del Norte, be **FINED** the amount of One Hundred Thousand Pesos (₱100,000.00) for failure to decide cases subject of Petitions for Extension of Time to Decide and One Hundred Thousand Pesos (₱100,000.00) for violation of Administrative Circular No. 43-2004 dated September 6, 2004 (Adopting New Guidelines on the Filing of Applications for Optional Retirement) to be deducted from his retirement benefits.[6]

x x x x x x x x x

Ruling of the Court

We consider the foregoing findings and recommendations of the OCA to be in accord with the evidence on record and conformable to the pertinent canons and jurisprudence on judicial misconduct.

[6] *Id*. at pp. 297-301.

The first charge against the respondent Judge concerned his failure to resolve the 12 cases for which he had requested extensions of his period to decide them. The requests for extension were granted, but he did not decide the cases by the time of his optional retirement.

In his written communications to the Court,[7] respondent Judge attempted to explain his failure to resolve such cases by citing his service in several branches of the Regional Trial Court in Davao. Yet, such explanation did not exculpate him because the additional court assignments or designations imposed upon him as a judge did not make him less liable for the delays.[8] In taking his oath of office as a judicial officer, he precisely swore to perform his duties efficiently in order not to prejudice the litigants. Efficiency thus became his professional commitment for as long as he was on the Bench. He also well knew that Section 15(1), Article VIII of the 1987 Constitution mandated that cases or matters filed in the lower courts must be decided or resolved within three months from the time they are submitted for decision or resolution. He was further aware of Rule 3.05, Canon 3 of the *Code of Judicial Conduct* by which he was expressly required as a judge to promptly dispose of court business, and to decide cases within the prescribed periods. He was expected to have become apprised that any delays in the disposition of cases would surely undermine the people's faith and confidence in the Judiciary.[9] Accordingly, he should have been imbued with that high sense of duty and responsibility in the discharge of his duties and obligations to promptly administer justice while he sat as judge.[10] His failure to promptly dispose of court

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[7] *Id*. at 286-289; 303-305.

[8] *Re: Judicial Audit of the RTC, Br.14, Zamboanga City Presided Over by the Hon. Ernesto R. Gutierrez, formerly the Presiding Judge thereof*, A.M. No. RTJ-05-1950, February 13, 2006, 482 SCRA 310, 317.

[9] *Office of the Court Administrator v. Butalid*, AM No. RTJ-96-1337, August 5, 1998, 293 SCRA 589, 601; *Ng v. Ulibari*, AM No. MTJ-98-1158, July 30, 1998, 293 SCRA 342; *Grefaldeo v. Lacson*, AM No. MTJ-93-881, August 3, 1998, 293 SCRA 524.

[10] *Re: Report on the Judicial Audit and Physical Inventory of Cases in the Regional Trial Court, Br. 54, Bacolod City*, A.M. No. 06-4-219-RTC, November 2, 2006, 506 SCRA 505, 520.

business, and to decide cases within the prescribed periods efficiently constituted gross inefficiency and warranted the imposition of the condign administrative sanction on him.

Section 9, Rule 140 of the *Rules of Court*, as amended by A.M. No. 01-8-10-SC, classifies undue delay in rendering a decision as a less serious charge, and sets the penalty of suspension from office without salary and other benefits from one month to three months, *or* a fine of ₱10,000.00 to ₱20,000.00. Even so, the OCA notes in its report and recommendation that the Court has allowed deviations from the range of the amounts of imposable fines by imposing fines that are either less or more than those prescribed.[11] In this connection, we cannot be tolerant of the gross inefficiency of respondent Judge. That he applied for optional retirement but did not exert effort in deciding his pending cases aggravated his inefficiency and lack of dedication to his duties as judge. He thereby manifested a wanton disregard of the constitutional rights of the litigants to the speedy disposition of their cases in the various branches of the Regional Trial Court that he presided. Suspension from office for some length of time without salary and other benefits would be an appropriate penalty, but he already retired from the service. Consequently, the recommendation of the OCA of imposing a fine of ₱100,000.00 as sanction for his failure to decide the cases that were the subject of his requests for extension of time to decide to be deducted from his accrued leave credits becomes just and reasonable.

The second charge against respondent Judge related to his violation of Administrative Circular No. 43-2004 dated September 6, 2004.

Administrative Circular No. 43-2004 required, among others, that the judge applying for optional retirement should

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[11] *Rollo*, p. 298; citing *Request of Judge Nino A. Batingana, Regional Trial Court, Branch 6, Mati City, Davao Oriental, for extension of time to decide Civil Case No. 2049*, A.M. No. 09-2-74-RTC, June 29, 2010, 622 SCRA 8, 11.

already cease working and discharging his functions as judge even "[i]f on the date specified in the application as the date of the effectivity of the [optional] retirement, [he] has not yet received any notice of approval or denial of his application."

In his case, respondent Judge signified the effectivity of his optional retirement to be January 30, 2009, although he subsequently requested an extension until February 20, 2009 to enable him to promulgate decisions he had supposedly prepared in the last week of January 2009.

The OCA found and reported that in the period in question respondent Judge decided 10 civil cases and four criminal cases assigned in Branch 1 of the Regional Trial Court in Tagum, whereby he acquitted the accused; that he dismissed 10 criminal cases and acquitted the accused in one criminal case assigned in Branch 2 of the Regional Trial Court in Tagum; that he decided one criminal case assigned in Branch 5 of the Regional Trial Court in Mati on January 25, 2009 in which he found the accused guilty of murder, but the decision was not promulgated because of the intervening designation of another judge as assisting judge of that branch; that he prepared the decision in another criminal case acquitting the accused, but the decision was not promulgated because of the filing of a motion to suspend the promulgation; and that he acquitted the accused in another criminal case on February 2, 2009. He thereby clearly violated the conditions imposed by the Court in Administrative Circular No. 43-2004.

It is but appropriate and necessary, therefore, that the Court adopts the findings and recommendation of the OCA to severely sanction respondent Judge for violating Administrative Circular No. 43-2004. For this purpose, the amount of ₱100,000.00 as fine will serve as sufficient sanction. We note, indeed, that despite not having decided the 12 cases subject of his requests for extension of time to decide, he was able to decide other cases in disregard of the conditions defined by Administrative Circular No. 43-2004 dated September 6, 2004. That was very odd on his part, for he should have trained his sudden burst of dedication to judicial work to the cases for which he had requested the extensions of the time to decide. Such uncommon alacrity and

ability of disposing of the other cases can only generate a strong suspicion of irregularity against him. He thereby exhibited undue haste in favoring the accused in those criminal cases. The appearance of impropriety became more pronounced because he promulgated his acquittals and dismissals after the supposed effectivity of his optional retirement in violation of Administrative Circular No. 43-2004. He became unmindful of Canon 2 of the *Code of Judicial Conduct*, which demanded of him to avoid not only impropriety but also the mere appearance of impropriety in all activities.[12]

WHEREFORE, the Court **FINDS** and **HOLDS** respondent **Judge JUSTINO G. AVENTURADO GUILTY**:

1. Of **GROSS IRREGULARITY AND SERIOUS MISCONDUCT**, as well as **GROSS INEFFICIENCY AND INCOMPETENCE** for failure to decide the 12 cases that were the subject of his requests for extension of time to dispose or to decide cases, and, **ACCORDINGLY**, **FINES** him in the amount of ₱100,000.00; and

2. Of **GROSS VIOLATION OF ADMINISTRATIVE CIRCULAR NO. 43-2004** dated September 6, 2004 (*Adopting New Guidelines on the Filing of Applications for Optional Retirement*), and, **ACCORDINGLY**, **FINES** him in the amount of ₱100,000.00.

The Court **DIRECTS** that the fines herein imposed shall be deducted from the retirement benefits of **Judge JUSTINO G. AVENTURADO.**

SO ORDERED.

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

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[12] *Vidal v. Dojillo, Jr.*, A.M. No. MTJ-05-1591, July 14, 2005, 463 SCRA 264, 267.

EN BANC

[G.R. No. 181284. April 18, 2017]

LOLOY UNDURAN, BARANGAY CAPTAIN ROMEO PACANA, NESTOR MACAPAYAG, RUPERTO DOGIA, JIMMY TALINO, ERMELITO ANGEL, PETOY BESTO, VICTORINO ANGEL, RUEL BOLING, JERMY ANGEL, BERTING SULOD, RIO BESTO, BENDIJO SIMBALAN, and MARK BRAZIL, *petitioners, vs.* **RAMON ABERASTURI, CRISTINA C. LOPEZ, CESAR LOPEZ JR., DIONISIO A. LOPEZ, MERCEDES L. GASTON, AGNES H. LOPEZ, EUSEBIO S. LOPEZ, JOSE MARIA S. LOPEZ, ANTON B. ABERASTURI, MA. RAISSA A. VELEZ, ZOILO ANTONIO A. VELEZ, CRISTINA ABERASTURI, EDUARDO LOPEZ, JR., ROSARIO S. LOPEZ, JUAN S. LOPEZ, CESAR ANTHONY R. LOPEZ, VENANCIO L. GASTON, ROSEMARIE S. LOPEZ, JAY A. ASUNCION, NICOLO ABERASTURI, LISA A. ASUNCION, INEZ A. VERAY, HERNAN A. ASUNCION, ASUNCION LOPEZ, THOMAS A. VELEZ, LUIS ENRIQUE VELEZ, ANTONIO H. LOPEZ, CHARLES H. LOPEZ, ANA L. ZAYCO, PILAR L. QUIROS, CRISTINA L. PICAZO, RENATO SANTOS, GERALDINE AGUIRRE, MARIA CARMENCITA T. LOPEZ, and as represented by attorney-in-fact RAMON ABERASTURI,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; INDIGENOUS PEOPLES' RIGHTS ACT (IPRA) OF 1997 (RA 8371); JURISDICTION OF THE NATIONAL COMMISSION ON INDIGENOUS PEOPLES (NCIP); NCIP HAS JURISDICTION OVER CLAIMS AND DISPUTES INVOLVING RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES (ICCs)/INDIGENOUS PEOPLES (IPs) ONLY WHEN BOTH PARTIES BELONG TO THE SAME

ICC/IP GROUP; OTHERWISE, REGULAR COURTS SHALL HAVE JURISDICTION.— As held in the main decision, the NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/IP group because of the qualifying provision under Section 66 of the IPRA that "no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws." Bearing in mind that the primary purpose of a *proviso* is to limit or restrict the general language or operation of the statute, and that what determines whether a clause is a *proviso* is the legislative intent, the Court stated that said qualifying provision requires the presence of two conditions before such claims and disputes may be brought before the NCIP, *i.e.*, exhaustion of all remedies provided under customary laws, and the Certification issued by the Council of Elders/ Leaders who participated in the attempt to settle the dispute that the same has not been resolved. The Court thus noted that the two conditions cannot be complied with if the parties to a case either (1) belong to different ICCs/IP groups which are recognized to have their own separate and distinct customary laws, or (2) if one of such parties was a non-ICC/IP member who is neither bound by customary laws or a Council of Elders/ Leaders, for it would be contrary to the principles of fair play and due process for parties who do not belong to the same ICC/IP group to be subjected to its own distinct customary laws and Council of Elders/Leaders. In which case, the Court ruled that the regular courts shall have jurisdiction, and that the NCIP's quasi-judicial jurisdiction is, in effect, limited to cases where the opposing parties belong to the same ICC/IP group.

2. ID.; ID.; ID.; CONCURRENT JURISDICTION, DEFINED AND EXPLAINED; IPRA DOES NOT, EXPRESSLY OR IMPLIEDLY, CONFER CONCURRENT JURISDICTION TO THE NCIP AND THE REGULAR COURTS OVER CLAIMS INVOLVING RIGHTS OF ICCs/IPs.— Concurrent or coordinate jurisdiction is that which is "exercised by different courts at the same time over the same subject matter and within the same territory, and wherein litigants may in the first instance resort to either court indifferently, that of several different tribunals, each authorized to deal with the same subject matter, and when a proceeding in respect of a certain subject matter can

be brought in any one of several different courts, they are said to have concurrent jurisdiction." While courts of concurrent jurisdiction are courts of equal dignity as to matters concurrently cognizable, neither having supervisory power over process from the other, the rule is that the court which first takes cognizance of an action over which it has jurisdiction and power to afford complete relief has the exclusive right to dispose of the controversy without interference from other courts of concurrent jurisdiction in which similar actions are subsequently instituted between the same parties seeking similar remedies and involving the same questions. Such rule is referred to as the principle of priority or the rule of exclusive concurrent jurisdiction. Although comity is sometimes a motive for the courts to abide by the priority principle, it is a legal duty of a court to abide by such principle to reduce the possibility of the conflicting exercise of concurrent jurisdiction, especially to reduce the possibility that a case involving the same subject matter and the same parties is simultaneously acted on in more than one court. After a careful perusal of the provisions of the entire IPRA, the Court discerns nothing therein that expressly or impliedly confers concurrent jurisdiction to the NCIP and the regular courts over claims and disputes involving rights of ICCs/IPs between and among parties belonging to the same ICC/IP group.

3. ID.; ID.; ID.; PRIMARY JURISDICTION OF NCIP; INSTANCES WHERE NCIP HAS PRIMARY JURISDICTION OVER CLAIMS REGARDLESS OF WHETHER ONE OF THE PARTIES IS NON-ICC/IP, OR WHERE THE PARTIES ARE MEMBERS OF DIFFERENT ICCs/IPs GROUPS.— Given that the provisions of the enabling statute are the yardsticks by which the Court would measure the quantum of quasi-judicial powers that an administrative agency may exercise, as defined in the enabling act of such agency, it is apt to underscore the provisions of the IPRA which invest primary jurisdiction over claims and disputes involving rights of ICCs/IP groups to the NCIP, as the primary government agency responsible for the recognition of their ancestral domain and rights thereto: 1. Section 52(h) of the IPRA anent the power of the NCIP Ancestral Domain Office (*ADO*) to deny application for CADTs, in relation to Section 62, regarding the power of the NCIP to hear and decide unresolved adverse claims. x x x 2. Section 53 on the NCIP-ADO's power to deny applications for CALTs and on the NCIP's power to grant meritorious claims and resolve conflicting claims x x x.3. Section

54 as to the power of the NCIP to resolve fraudulent claims over ancestral domains and lands x x x. As can be gleaned from the foregoing provisions, the NCIP has primary jurisdiction over these cases even if one of the parties is a non-ICC/IP, or where the opposing parties are members of different ICCs/IPs groups. Indeed, the questions involved in said cases demand the exercise of sound administrative discretion requiring special knowledge, experience, and services of the NCIP to determine technical and intricate matters of fact. No less than the IPRA states that the NCIP is the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domain as well as their rights thereto, with due regard to their beliefs, customs, traditions and institutions. At this juncture, it is not amiss to state that the NCIP's decision shall be appealable to the Court of Appeals by way of a petition for review under Rule 43 of the Rules of Court.

LEONEN, *J.*, *concurring opinion*:

POLITICAL LAW; ADMINISTRATIVE LAW; INDIGENOUS PEOPLES' RIGHTS ACT (IPRA) OF 1997 (RA 8371); RATIONALE; TO INSIST THAT THE NATIONAL COMMISSION ON INDIGENOUS PEOPLES (NCIP) HAS THE SOLE AND EXCLUSIVE JURISDICTION IN ALL CONFLICTS INVOLVING INDIGENOUS PEOPLES IS TO BETRAY THE DESIRE OF EMPOWERMENT IMPLICIT IN IPRA.— [T]he Indigenous Peoples' Rights Act cannot be interpreted as a charter that removes all minoritized Filipinos from the workings and application of the national legal system. Persons and groups belonging to what is still now considered as indigenous cultural communities/indigenous peoples interact with other cultures who consider themselves as Filipinos. To my knowledge, the Indigenous Peoples' Rights Act is an exemplary social legislation that should assist members of indigenous cultural communities to be empowered in all their relationships. The statute was not designed to facilitate their continued social and cultural isolation. The Indigenous Peoples' Rights Act should not cause their further marginalization. To insist that the NCIP has the sole and exclusive jurisdiction in any conflict involving indigenous cultural communities/ indigenous peoples is to insist on a dangerous and debilitating stereotype. It is to assume that no indigenous cultural

> communities/indigenous peoples have intellectual or moral resource to deal with outsiders on equal footing in regular courts of justice. It is also to insist that our regular judges should not inform themselves of the concerns of indigenous peoples or that they cannot acquire the cultural sensitivity to be able to resolve conflicts among indigenous peoples fully and fairly. Insisting that the NCIP should exclusively deal with all conflicts between and among indigenous cultural communities/indigenous peoples for so long as there is a member of an indigenous cultural communities/indigenous peoples involved creates an unnecessary artificial enclave that maintains the insidious caricatures of backward peoples insisted by our colonial past. Indigenous peoples are not that strange that they cannot deal with or be dealt with by regular courts. To insist otherwise is to betray the desire of empowerment implicit in the Indigenous Peoples' Rights Act.

APPEARANCES OF COUNSEL

Normita V. Batula, Tanggapang Panligal ng Katutubong Pilipino (PANLIPI), Danny N. Valenzuela and *The Solicitor General* for petitioners.

Romeo B. Fortea for respondents.

R E S O L U T I O N

PERALTA, *J.*:

For resolution are petitioners' Motion for Reconsideration and Supplemental Motion for Reconsideration of the Court's *en banc* Decision dated October 20, 2015, the dispositive portion of which states:

> **WHEREFORE**, the petition is **DENIED** and the Court of Appeals Decision dated August 17, 2006, and its Resolution dated July 4, 2007, in CA-G.R. SP No. 00204-MIN, are **AFFIRMED**.
>
> **SO ORDERED.**

In their Motion for Reconsideration, petitioners maintain that it is the National Commission on Indigenous Peoples (*NCIP*), not

the regular courts, which has jurisdiction over disputes and controversies involving ancestral domain of the Indigenous Cultural Communities (*ICCs*) and Indigenous Peoples (*IPs*) regardless of the parties involved.

Petitioners argue that the rule that jurisdiction over the subject matter is determined by the allegations of the complaint, admits of exceptions and can be relaxed in view of the special and unique circumstances obtaining this case, *i.e.*, the actual issue, as shown by their motion to dismiss, involves a conflicting claim over an ancestral domain. They seek to apply by analogy the principles in *Ignacio v. CFI Bulacan*,[1] *Ferrer v. Villamor*,[2] *Nonan v. Plan*,[3] among others, where it was held that the allegations of tenancy by the defendant in its answer may be used in the determination of the jurisdiction of the court, and if indeed tenancy exists, the same should be lodged before the Court of Industrial Relations (now the Department of Agrarian Reform and Adjudication Board). They also invoke *Leoquinco v. Canada Dry Bottling Co.,*[4] and *Mindanao Rapid Co. v. Omandam*[5] where it was ruled that if allegations of labor disputes or employer-employee relations are alleged by defendants in their answer and the same is shown to exist, the Industrial Court (now the National Labor Relations Commission) takes cognizance of the case.

Petitioners also argue that the Court's interpretation of Section 66[6] of Republic Act No. 8371, or the *Indigenous Peoples' Rights Act of 1997*," (*IPRA*) to the effect that the NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/

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[1] 149 Phil. 137 (1971).

[2] 158 Phil. 322 (1974).

[3] 159 Phil. 859 (1975).

[4] 147 Phil. 488 (1971).

[5] 149 Phil. 358 (1971).

[6] Section 66. *Jurisdiction of the NCIP.*—The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICC/IPs: *Provided, however,* that no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their

IPs only when they arise between or among parties belonging to the same ICC/IP group, is contrary to law and the Constitution. They posit that the State recognizes that each ICC or IP group is, and has been since time immemorial, governed by their own customary laws, culture, traditions and governance systems, and has the right to preserve and develop them as they may deem fit and necessary. Thus, each ICC and IP group did not, and does not, need an act of Congress such as the IPRA, to enforce their customary laws among themselves and their respective communities, and more so in further developing them.

Petitioners insist that claims and disputes within ICCs/IPs and/or between ICCs/IPs shall be resolved using customary laws, consistent with the State policy under the Constitution and the IPRA to recognize, respect and protect the customs, traditions and cultural integrity and institutions of the ICCs/IPs. They claim that cases of disputes between IPs within the same ICC/IP group are always resolved completely and with finality in accordance with their customary laws and practice, hence, the interpretation that the NCIP shall have jurisdiction in cases of disputes among IPs within the same ICC/IP group is not only absurd but unconstitutional. They aver that even disputes between different ICCs/IPs shall also fall within the jurisdiction of whatever their customary laws and practice provide since Section 65[7] of the IPRA does not so distinguish. They presume that after co-existing for centuries in adjacent ancestral domains, some of the ICCs/IPs have developed their own indigenous means of settling disputes between other ICCs/IPs.

With respect to unresolved claims and disputes between different ICCs/IP groups and between ICCs/IPs and non-IPs, petitioners theorize that they fall under

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customary laws. For this purpose, a certification shall be issued by the Council of Elder/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

[7] Section 65. *Primacy of Customary Laws and Practices*.– When disputes involve ICCs/IPs, customary laws and practices shall be used in resolving the dispute.

the jurisdiction of the NCIP pursuant to the provisions of the IPRA. They cite the concurring opinion of Justice Presbitero J. Velasco, Jr. that the second and third parts of Section 66 of the law only provide for a condition precedent that is merely procedural and does not limit the NCIP jurisdiction over disputes involving the rights of ICC/IPs. They contend that such interpretation is consistent with other provisions of the IPRA which lay out NCIP's jurisdiction under Sections 46(g),[8] 62,[9] 69,[10]

[8] Section 46. *Offices within the NCIP.* — The NCIP shall have the following offices which shall be responsible for the implementation of the policies hereinafter provided:

g) *Legal Affairs Office* — There shall be a Legal Affairs Office which shall advice the NCIP on all legal matters concerning ICCs/IPs and which shall be responsible for providing ICCs/IPs with legal assistance in litigation involving community interest. It shall conduct preliminary investigation on the basis of complaints filed by the ICCs/IPs against a natural or juridical person believed to have violated ICCs/IPs rights. On the basis of its findings, it shall initiate the filing of appropriate legal or administrative action to the NCIP.

[9] Section 62. *Resolution of Conflicts.* — In cases of conflicting interest, where there are adverse claims within the ancestral domains as delineated in the survey plan, and which cannot be resolved, the NCIP shall hear and decide, after notice to the proper parties, the disputes arising from the delineation of such ancestral domains: *Provided*, That if the dispute is between and/or among ICCs/IPs regarding the traditional boundaries of their respective ancestral domains, customary process shall be followed. The NCIP shall promulgate the necessary rules and regulations to carry out its adjudicatory functions: *Provided*, *further*, That any decision, order, award or ruling of the NCIP on any ancestral domain dispute or on any matter pertaining to the application, implementation, enforcement and interpretation of this Act may be brought for Petition for Review to the Court of Appeals within fifteen (15) days from receipt of a copy thereof.

[10] Section 69. *Quasi-Judicial Powers of the NCIP.* — The NCIP shall have the power and authority:

a) To promulgate rules and regulations governing the hearing and disposition of cases filed before it as well as those pertaining to its internal functions and such rules and regulations as may be necessary to carry out the purposes of this Act;

b) To administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, agreements and other document of similar nature as may be material to a just determination of the matter under investigation or hearing conducted in pursuance of this Act;

c) To hold any person in contempt, directly or indirectly, and impose appropriate penalties therefor; and

70[11] and 72[12] of the IPRA.

Petitioners further point out that Section 72 of the IPRA permits the imposition of penalties under customary law even to non-IPs, and does not distinguish as to whom customary law may apply. According to them, any natural or juridical person, IPs or not, found to have violated provisions of then IPRA, particularly those identified in Section 72, may be dealt with by imposing penalties found in the corresponding customary laws. They submit that Section 72 does not require as a condition precedent familiarity of the person to be penalized to the existing customary law of the affected community nor does it require for the said customary law to have been published to allow for its imposition to any person who committed the violation. Thus,

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d) To enjoin any or all acts involving or arising from any case pending before it which, if not restrained forthwith, may cause grave or irreparable damage to any of the parties to the case or seriously affect social or economic activity.

[11] Section 70. *No Restraining Order or Preliminary Injunction*. — No inferior court of the Philippines shall have jurisdiction to issue any restraining order or writ of preliminary injunction against the NCIP or any of its duly authorized or designated offices in any case, dispute or controversy arising from, necessary to, or interpretation of this Act and other pertinent laws relating to ICCs/IPs and ancestral domains.

[12] Section 72. *Punishable Acts and Applicable Penalties*. — Any person who commits violation of any of the provisions of this Act, such as, but not limited to, unauthorized and/or unlawful intrusion upon any ancestral lands or domains as stated in Sec. 10, Chapter III, or shall commit any of the prohibited acts mentioned in Sections 21 and 24, Chapter V, Section 33, Chapter VI hereof, shall be punished in accordance with the customary laws of the ICCs/IPs concerned: *Provided*, That no such penalty shall be cruel, degrading or inhuman punishment: *Provided*, *further*, That neither shall the death penalty or excessive fines be imposed. This provision shall be without prejudice to the right of any ICCs/IPs to avail of the protection of existing laws. In which case, any person who violates any provision of this Act shall, upon conviction, be punished by imprisonment of not less than nine (9) months but not more than twelve (12) years or a fine of not less than One hundred thousand pesos (₱100,000) nor more than Five hundred thousand pesos (₱500,000) or both such fine and imprisonment upon the discretion of the court. In addition, he shall be obliged to pay to the ICCs/IPs concerned whatever damage may have been suffered by the latter as a consequence of the unlawful act.

they assert that Section 72 negates the ruling that NCIP's jurisdiction applies only to Sections 52, 54, 62 and 66, insofar as the dispute involves opposing parties belonging to the same tribe.

Petitioners likewise aver that Sections 46(g), 62, 69, 70 and 72 of the IPRA, taken together and in harmony with each other, clearly show that conflicts and disputes within and between ICCs/IPs are first under the jurisdiction of whatever their customary law provides, but disputes that are not covered by their customary laws, either between different ICCs/IPs or between an ICC/IP and a non-IP are also within the jurisdiction within the NCIP. Petitioners invoke *The City Government of Baguio City v. Masweng*[13] and *Baguio Regreening Movement, Inc. v. Masweng*[14] to support their theory that NCIP has original and exclusive jurisdiction over a case involving a dispute or controversy over ancestral domains even if one of the parties is a non-ICC/IP or does not belong to the same ICC/IP group.

In essence, petitioners argue that (1) the IPRA was not enacted to protect an IP from another IP whether from the same or different group, because they have their own means of resolving a dispute arising between them, through customary laws or compromises, as had been done for a very long time even before the passage of the law; (2) the IPRA is meant to address the greater prejudice that IPs experience from non-IPs or the majority group; and (3) the limited interpretation of Section 66 of the IPRA to its minute details without looking into the intent of the law will result in an unimaginable situation where the jurisdiction of the NCIP is only limited to those where both parties belong to the same ICCs/IPs; and (4) the application of the provisions of the IPRA, as a national law and a landmark social justice legislation, is encompassing and not limited to a particular group, *i.e.*, ICCs/IPs.

In their Supplemental Motion for Reconsideration, petitioners stress that (1) the NCIP and not the regular courts has jurisdiction

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[13] 597 Phil. 668 (2009).

[14] 705 Phil. 103 (2013).

over the case under the principle that jurisdiction over the subject matter of the case is determined by the allegations in the complaint, and pursuant to jurisprudence allowing exemptions thereto; (2) the jurisdiction over the subject matter of the case rests upon the NCIP as conferred by the IPRA; (3) the IPRA is a social legislation that seeks to protect the IPs not so much from themselves or fellow IPs but more from non-IPs; (4) the IPRA created the NCIP as the agency of government mandated to realize the rights of IPs; (5) in the exercise of its mandate, the NCIP was created as a quasi-judicial body with jurisdiction to resolve claims and disputes involving the rights of IPs; (6) the jurisdiction of the NCIP in resolving claims and disputes involving the rights of IPs is not limited to IPs of the same tribe; (7) harmonizing the related provisions of the IPRA supports the argument that the NCIP has jurisdiction over cases involving IP rights whether or not the parties are IPs or non-ICCs/IPs; (8) the NCIP as quasi-judicial agency provides IPs mechanisms for access to justice in the fulfillment of the State's obligations to respect, protect and fulfill IP's human rights; (9) the NCIP has the competence and skill that would greatly advance the administration of justice with respect to protection and fulfillment of ICC/IP rights/human rights; and (10) recognition and enforcement of customary laws and indigenous justice systems fulfill the State's obligations as duty bearers in the enforcement of human rights.

While the petitioners' Motion for Reconsideration and the Supplemental Motion for Reconsideration fail to persuade, there is a need to clarify the NCIP's jurisdiction over claims and disputes involving rights of ICC/IPs.

The Court finds no merit in petitioners' contention that jurisdiction of the court over the subject matter of a case is not merely based on the allegations of the complaint in certain cases where the actual issues are evidenced by subsequent pleadings. It is well settled that the jurisdiction of the court cannot be made to depend on the defenses raised by the defendant in the answer or a motion to dismiss; otherwise, the question of jurisdiction would depend almost entirely

on the defendant.[15] Suffice it also to state that the Court is unanimous[16] in denying the petition for review on *certiorari* on the ground that the CA correctly ruled that the subject matter of the original and amended complaint based on the allegations therein is within the jurisdiction of the RTC.

In his Concurring Opinion, Justice Presbitero J. Velasco, Jr. concurred with the *ponencia* that the RTC has jurisdiction over the case:

> Both original and amended complaints, *accion reivindicatoria* and injunction, respectively, are incapable of pecuniary estimation; thus falling within the jurisdiction of the RTC. As correctly pointed out by the *ponencia*, "jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action." It cannot be acquired through a waiver or enlarged by the omission of the parties or conferred by acquiescence of the court.[17]

In his Separate Opinion, Justice Arturo D. Brion also concurred with the *ponencia's* conclusion that the RTC has jurisdiction over the case because (1) the CA correctly ruled that the RTC's February 14, 2005 Order is not tainted with grave abuse of discretion, (2) jurisdiction over the subject matter is determined by law and the allegations of the complaint; and (3) the NCIP's jurisdiction over disputes is limited to cases where both parties are members of the same ICC/IP group.

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[15] *Spouses Atuel v. Sps. Valdez*, 451 Phil. 631, 645 (2003).

[16] Penned by Associate Justice Diosdado M. Peralta and concurred in by Chief Justice Maria Lourdes P. A. Sereno and Associate Justices Presbitero J. Velasco, Jr. (Concurring Opinion), Teresita J. Leonardo-De Castro, Arturo D. Brion (Separate Opinion), Lucas P. Bersamin, Martin S. Villarama, Jr., Jose Portugal Perez (Concurring Opinion), Jose Catral Mendoza, Bienvenido L. Reyes, Estela M. Perlas-Bernabe, Marvic M.V.F. Leonen (Separate Concurring), and Francis H. Jardeleza. Associate Justices Antonio T. Carpio and Mariano C. Del Castillo, on official leave.

[17] Citations omitted.

In his Concurring Opinion, Justice Jose Portugal Perez agreed with the *ponencia* that jurisdiction over the original and amended complaint, *accion reivindicatoria* and injunction, correctly lies with the RTC, based on the principle that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint.

In his Concurring Opinion, Justice Marvic M.V.F. Leonen likewise voted to dismiss the petition for review on *certiorari*, and to affirm the assailed decision and resolution of the CA. He concurred with the *ponencia* in holding that respondents' action, alleged to be involving a claim over the ancestral domain of an ICC/IP, does not fall within the exclusive jurisdiction of the NCIP.

In sum, the Court finds no substantial argument in petitioners' motions for reconsideration to justify a reversal of its ruling that jurisdiction over the subject matter of respondents' original and amended complaint based on the allegations therein lies with the RTC.

The crucial issue in this case, however, revolves around the complex nature of the jurisdiction of the NCIP, as shown by the different but well-reasoned opinions of the Associate Justices concerned *vis-à-vis* the arguments in petitioners' motions for reconsideration.

To recall, the *ponencia* has held that pursuant to Section 66 of the IPRA, the NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/IP group. When such claims and disputes arise between or among parties who do not belong to the same ICC/IP group, the case shall fall under the jurisdiction of the regular courts, instead of the NCIP. Thus, even if the real issue involves dispute over a land which appear to be located within the ancestral domain of an ICC/IP, it is not the NCIP but the RTC which has the power to hear, try and decide the case. In exceptional cases under Sections 52, 54 and 62 of the IPRA, the NCIP shall still have jurisdiction over such claims and disputes even if the parties involved do not belong to the same ICC/IP group.

Justice Velasco's position is that the NCIP has jurisdiction over all claims and disputes involving rights of ICCs/IPs, regardless of whether or not they belong to the same IP/IC group. According to him, all cases and disputes where both parties are ICCs/IPs fall under the exclusive jurisdiction of the NCIP; all cases and disputes where one of the parties is a non-ICC/IP are covered by the jurisdiction of the regular courts regardless of the subject matter even if it involves ancestral domains or lands of ICCs/IPs; and regular courts have jurisdiction over cases and disputes as long as there are parties who are non-ICCs/IPs.

For Justice Brion, the IPRA's intent is neither to grant the NCIP sole jurisdiction over disputes involving ICCs/IPs, nor to disregard the rights of non-ICCs/IPs under national laws. However, he stresses that the NCIP maintains primary jurisdiction over: (1) adverse claims and border disputes arising from delineation of ancestral domains/lands; (2) cancellation of fraudulently issued Certificate of Ancestral Domain Titles (*CADTs*); and (3) disputes and violations of ICCs/IPs rights between members of the same ICC/IP group.

Justice Perez opines that neither does the IPRA confer original and exclusive jurisdiction to the NCIP over all claims and disputes involving rights of ICCs/IPs. He adds that the NCIP is only vested with jurisdiction to determine the rights of ICCs/IPs based on customs and customary law in a given controversy against another ICC/IP, but not the applicable law for each and every kind of ICC/IP controversy even against an opposing non-ICC/IP. He concludes that under Section 66 of the IPRA, the jurisdiction of the NCIP is limited, and confined only to cases involving rights of IPs/ICCs, where both such parties belong to the same ICC/IP group.

Justice Leonen is of the view that the jurisdiction of the NCIP is limited to disputes where both parties are members of ICC/IP group and come from the same ethnolinguistic group. He states that the requirements for the proper exercise of the NCIP's jurisdiction over a dispute, pursuant to Section 66 of the IPRA, are as follows: (1) the claim or dispute must involve the rights of ICCs/IPs; (2) both parties must belong to the same ICC/IP group; (3) these parties must have exhausted remedies under their ICC/

IP's customary laws; and (4) compliance with this requirement of exhausting remedies under customary laws must be evidenced by a certification issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute, to the effect that the dispute has not been resolved.

Meanwhile, in *Lim v. Gamosa*,[18] which was penned by Justice Perez, the Court held that the limited jurisdiction of the NCIP is at best concurrent with that of the regular trial courts:

> As previously adverted to, we are not unaware of *The City Government of Baguio City, et al. v. Atty. Masweng, et al.* and similar cases where we made an implicit affirmation of the NCIP's jurisdiction over cases where one of the parties are non-ICCs/IPs. Such holding, however, and all the succeeding exercises of jurisdiction by the NCIP, cannot tie our hands and declare a grant of primary and/or original jurisdiction, where there is no such explicit conferment by the IPRA. At best, the limited jurisdiction of the NCIP is concurrent with that of the regular trial courts in the exercise of the latter's general jurisdiction extending to all controversies brought before them within the legal bounds of rights and remedies.[19]

Guided by the foregoing ruling, the Court held in *Begnaen v. Spouses Caligtan*[20] that the NCIP-Regional Hearing Office (*RHO*), being the agency that first took cognizance of petitioner-appellant's complaint, has jurisdiction over the same to the exclusion of the MCTC. In said case where both parties are members of the same ICC and the subject of their dispute was an ancestral land, petitioner-appellant first invoked the NCIP's jurisdiction by filing with the RHO his complaint against respondents for "Land Dispute and Enforcement of Rights." When the RHO dismissed the complaint without prejudice for his failure to first bring the matter for settlement before the Council of Elders as mandated by the IPRA, petitioner-appellant

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[18] *Lim, et al. v. Hon. Gamosa*, G.R. No. 193964, December 2, 2015.

[19] Citations omitted and emphasis added.

[20] *Begnaen v. Spouses Caligtan*, G.R. No. 189852, August 17, 2016. Penned by Chief Justice Sereno, with Associate Justices Leonardo-de Castro, Bersamin, Perlas-Bernabe and Alfredo Benjamin S. Caguioa, concurring.

filed instead a complaint for forcible entry before the MCTC. Aside from its ruling that the NCIP has excluded the MCTC of its jurisdiction over the same subject matter, the Court said that petitioner is estopped from belatedly impugning the jurisdiction of the NCIP-RHO after initiating a complaint before it and receiving an adverse ruling.

Based on the diverse views on the nature and scope of the NCIP's jurisdiction over claims and disputes involving the rights of ICCs/IPs, the recent jurisprudence[21] on the matter, as well as petitioners' arguments in their motions for reconsideration, the Court is confronted again with the issue of whether the NCIP's jurisdiction is limited to cases where both parties are ICCs/IPs, or primary and concurrent with regular courts, and/or original and exclusive to the exclusion of said courts, on all matters involving the rights of ICCs/IPs.

After a circumspect review of the relevant laws and jurisprudence, the Court maintains that the jurisdiction of the NCIP under Section 66 of the IPRA is limited to claims and disputes involving rights of IPs/ICCs where both parties belong to the same ICC/IP group, but if such claims and disputes arise between or among parties who do not belong to the same ICC/IP group, the proper regular courts shall have jurisdiction.

To begin with, jurisdiction over the subject matter is conferred by the Constitution or by law. A court of general jurisdiction has the power or authority to hear and decide cases whose subject matter does not fall within the exclusive original jurisdiction of any court, tribunal or body exercising judicial or quasi-judicial function.[22] In contrast, a court of limited jurisdiction, or a court acting under special powers, has only the jurisdiction expressly delegated.[23] An administrative agency, acting in its quasi-judicial

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[21] *Lim, et al. v. Hon. Gamosa, supra* note 18, and *Begnaen v. Spouses Caligtan*, *supra* note 20. Penned by Associate Justice Perez, with Chief Justice Sereno, and Associate Justices Leonardo-de Castro, Bersamin, Perlas-Bernabe, and Caguioa, concurring.

[22] *Bank of Commerce v. Planters Development Bank, et al*., 695 Phil. 627, 653 (2012).

[23] 21 C.J.S. Courts § 16 (1940).

capacity, is a tribunal of limited jurisdiction which could wield only such powers that are specifically granted to it by the enabling statutes.[24] Limited or special jurisdiction is that which is confined to particular causes or which can be exercised only under limitations and circumstances prescribed by the statute.[25]

As held in the main decision, the NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/IP group because of the qualifying provision under Section 66 of the IPRA that "no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws." Bearing in mind that the primary purpose of a *proviso* is to limit or restrict the general language or operation of the statute,[26] and that what determines whether a clause is a *proviso* is the legislative intent,[27] the Court stated that said qualifying provision requires the presence of two conditions before such claims and disputes may be brought before the NCIP, *i.e.*, exhaustion of all remedies provided under customary laws, and the Certification issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved. The Court thus noted that the two conditions cannot be complied with if the parties to a case either (1) belong to different ICCs/IP groups which are recognized to have their own separate and distinct customary laws, or (2) if one of such parties was a non-ICC/IP member who is neither bound by customary laws or a Council of Elders/Leaders, for it would be contrary to the principles of fair play and due process for parties who do not belong to the same ICC/IP group to be subjected to its own distinct customary laws and Council of Elders/Leaders. In which case, the Court

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[24] *Bank of Commerce v. Planters Development Bank, et al.*, *supra* note 22, at 653.

[25] 21 C.J.S. Courts § 16 (1940).

[26] *Chartered Bank of India v. Imperial*, 48 Phil. 931, 949 (1921).

[27] *Manila Electric Co. v. Public Utilities Employees Association*, 79 Phil. 409, 411 (1947).

ruled that the regular courts shall have jurisdiction, and that the NCIP's quasi-judicial jurisdiction is, in effect, limited to cases where the opposing parties belong to the same ICC/IP group.

That the NCIP's quasi-judicial jurisdiction is limited can be further gathered from Justice Perez' discussion in *Lim v. Gamosa*,[28] thus:

> Section 83 of the IPRA, the repealing clause, only specifies Presidential Decree No. 410, Executive Order Nos. 122B and 122C as expressly repealed. While the same section does state that "all other laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly," such an implied repeal is predicated upon the condition that a substantial and an irreconcilable conflict must be found in existing and prior Acts. The two laws refer to different subject matters, albeit the IPRA includes the jurisdiction of the NCIP. As such, resolution of conflicts between parties who are not both ICCs/IPs may still fall within the general jurisdiction of regular courts dependent on the allegations in the complaint or petition and the status of the parties.
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> There is no clear irreconcilable conflict from the investiture of jurisdiction to the NCIP in instances where, among others, all the parties are ICCs/IPs and the claim or dispute involves their rights, and the specific wording of Batas Pambansa Bilang 129, Sections 19-21 on the exclusive and original jurisdiction of the Regional Trial Courts, and Sections 33-35 on the exclusive and original jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts.
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> We should not, and cannot, adopt the theory of implied repeal except upon a clear and unequivocal expression of the will of the Congress, which is not manifest from the language of **Section 66 of the IPRA** which, to reiterate: (1) **did not use the words "primary" and/or "original and exclusive" to describe the jurisdiction of the NCIP over "all claims and disputes involving rights of ICCs/IPs"** and (2) contained a proviso requiring certification that the parties have exhausted their remedies provided under customary laws.
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> We are quick to clarify herein that even as we declare that in some instances the regular courts may exercise jurisdiction over cases which

[28] *Supra* note 18.

involve rights of ICCs/IPs, the governing law for these kinds of disputes necessarily include the IPRA and the rights the law bestows on ICCs/IPs.

In *Begnaen v. Spouses Caligtan*,[29] the Court affirmed and emphasized the afore-quoted ruling in *Lim v. Gamosa*[30] where it struck down as void an administrative rule that expanded the jurisdiction of the NCIP beyond the boundaries of the IPRA.

However, exception must be taken to the pronouncement in *Begnaen v. Spouses Caligtan*[31] that "[a]t best, the limited jurisdiction of the NCIP is concurrent with that of the regular trial courts in the exercise of the latter's general jurisdiction extending to all controversies brought before them within the legal bounds of rights and remedies."

Concurrent or coordinate jurisdiction is that which is "exercised by different courts at the same time over the same subject matter and within the same territory, and wherein litigants may in the first instance resort to either court indifferently, that of several different tribunals, each authorized to deal with the same subject matter, and when a proceeding in respect of a certain subject matter can be brought in any one of several different courts, they are said to have concurrent jurisdiction."[32] While courts of concurrent jurisdiction are courts of equal dignity as to matters concurrently cognizable, neither having supervisory power over process from the other,[33] the rule is that the court which first takes cognizance of an action over which it has jurisdiction and power to afford complete relief has the exclusive right to dispose of the controversy without interference from other courts of concurrent jurisdiction in which similar actions are subsequently instituted between the same parties seeking similar remedies and involving the same questions.[34] Such rule is referred to as the principle of

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[29] *Supra* note 20.

[30] *Supra* note 18.

[31] *Supra* note 20.

[32] 21 C.J.S. Courts § 18 (1940).

[33] *Id.* § 488.

[34] *Id.* § 492.

priority or the rule of exclusive concurrent jurisdiction. Although comity is sometimes a motive for the courts to abide by the priority principle, it is a legal duty of a court to abide by such principle to reduce the possibility of the conflicting exercise of concurrent jurisdiction, especially to reduce the possibility that a case involving the same subject matter and the same parties is simultaneously acted on in more than one court.[35]

After a careful perusal of the provisions of the entire IPRA, the Court discerns nothing therein that expressly or impliedly confers concurrent jurisdiction to the NCIP and the regular courts over claims and disputes involving rights of ICCs/IPs between and among parties belonging to the same ICC/IP group. What the Court finds instead is that the NCIP's limited jurisdiction is vested under Section 66 of the IPRA, while its primary jurisdiction is bestowed under Section 52(h) and 53, in relation to Section 62 of the IPRA, and Section 54 thereof.

Having discussed why the NCIP's jurisdiction under Section 66 of the IPRA is limited, but not concurrent with the regular courts, the Court will now expound on the NCIP's primary jurisdiction over claims regardless of whether the parties are non-ICCs/IPs, or members of different ICCs/IP groups, namely:(1) adverse claims and border disputes arising from the delineation of ancestral domains/lands,(2) cancellation of fraudulently issued CADTs, and (3) disputes and violations of ICCs/IPs rights between members of the same ICC/IP.

Primary jurisdiction is the power and authority vested by the Constitution or by statute upon an administrative body to act upon a matter by virtue of its specific competence.[36] Given that the provisions of the enabling statute are the yardsticks by which the Court would measure the quantum of quasi-judicial powers that an administrative agency may exercise, as defined in the enabling act of such agency,[37] it is apt to underscore the provisions of

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[35] 20 Am Jur 2d Courts§ 91 (1995).

[36] *Unduran v. Aberasturi*, October 20, 2015.

[37] *Id.* citing *Bank of Commerce v. Planters Development Bank*, *supra* note 22, at 660.

the IPRA which invest primary jurisdiction over claims and disputes involving rights of ICCs/IP groups to the NCIP, as the primary government agency responsible for the recognition of their ancestral domain and rights thereto:[38]

1. Section 52(h) of the IPRA anent the power of the NCIP Ancestral Domain Office (*ADO*) to deny application for CADTs, in relation to Section 62, regarding the power of the NCIP to hear and decide unresolved adverse claims:

SECTION 52. *Delineation Process*. — The identification and delineation of ancestral domains shall be done in accordance with the following procedures:

xxx xxx xxx

h) *Endorsement to NCIP*. — Within fifteen (15) days from publication, and of the inspection process, the Ancestral Domains Office shall prepare a report to the NCIP endorsing a favorable action upon a claim that is deemed to have sufficient proof. However, if the proof is deemed insufficient, the Ancestral Domains Office shall require the submission of additional evidence: *Provided*, That the Ancestral Domains Office shall reject any claim that is deemed patently false or fraudulent after inspection and verification: *Provided*, *further*, That in case of rejection, the Ancestral Domains Office shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the NCIP: *Provided*, *furthermore*, That **in cases where there are conflicting claims among ICCs/IPs on the boundaries of ancestral domain claims, the Ancestral Domains Office shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to the section below.**

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[38] Sec. 38. *National Commission on Indigenous Cultural Communities/ Indigenous Peoples (NCIP).*—To carry out the policies herein set forth, there shall be created the National Commission on ICCs/IPs (*NCIP*), which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domain as well as their rights thereto.

SECTION 62. *Resolution of Conflicts*. — In cases of conflicting interest, where there are adverse claims within the ancestral domains as delineated in the survey plan, and which cannot be resolved, **the NCIP shall hear and decide, after notice to the proper parties, the disputes arising from the delineation of such ancestral domains: *Provided*, That if the dispute is between and/or among ICCs/IPs regarding the traditional boundaries of their respective ancestral domains, customary process shall be followed**. The NCIP shall promulgate the necessary rules and regulations to carry out its adjudicatory functions: *Provided*, *further*, That any decision, order, award or ruling of the NCIP on any ancestral domain dispute or on any matter pertaining to the application, implementation, enforcement and interpretation of this Act may be brought for Petition for Review to the Court of Appeals within fifteen (15) days from receipt of a copy thereof.[39]

2. Section 53 on the NCIP-ADO's power to deny applications for CALTs and on the NCIP's power to grant meritorious claims and resolve conflicting claims:

SECTION 53. *Identification*, *Delineation and Certification of Ancestral Lands*. —

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e) Upon receipt of the applications for delineation and recognition of ancestral land claims, the Ancestral Domains Office shall cause the publication of the application and a copy of each document submitted including a translation in the native language of the ICCs/IPs concerned in a prominent place therein for at least fifteen (15) days. A copy of the document shall also be posted at the local, provincial, and regional offices of the NCIP and shall be published in a newspaper of general circulation once a week for two (2) consecutive weeks to allow other claimants to file opposition thereto within fifteen (15) days from the date of such publication: *Provided*, That in areas where no such newspaper exists, broadcasting in a radio station will be a valid substitute: *Provided*, *further*, That mere posting shall be deemed sufficient if both newspapers and radio station are not available;

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[39] Emphasis and underscoring added.

f) Fifteen (15) days after such publication, the Ancestral Domains Office shall investigate and inspect each application, and if found to be meritorious, shall cause a parcellary survey of the area being claimed. The Ancestral Domains Office shall reject any claim that is deemed patently false or fraudulent after inspection and verification. In case of rejection, the Ancestral Domains Office shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the NCIP. **In case of conflicting claims among individuals or indigenous corporate claimants, the Ancestral Domains Office shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to Sec. 62 of this Act**. In all proceedings for the identification or delineation of the ancestral domains as herein provided, the Director of Lands shall represent the interest of the Republic of the Philippines; and

g) The Ancestral Domains Office shall prepare and submit a report on each and every application surveyed and delineated to the NCIP, which shall, in turn, evaluate the report submitted. **If the NCIP finds such claim meritorious, it shall issue a certificate of ancestral land, declaring and certifying the claim of each individual or corporate (family or clan) claimant over ancestral lands**.[40]

3. Section 54 as to the power of the NCIP to resolve fraudulent claims over ancestral domains and lands:

SECTION 54. *Fraudulent Claims*. — The Ancestral Domains Office may, upon written request from the ICCs/IPs, review existing claims which have been fraudulently acquired by any person or community. **Any claim found to be fraudulently acquired by, and issued to, any person or community may be cancelled by the NCIP after due notice and hearing of all parties concerned**.[41]

As can be gleaned from the foregoing provisions, the NCIP has primary jurisdiction over these cases even if one of the parties is a non-ICC/IP, or where the opposing parties are members of different ICCs/IPs groups. Indeed, the questions involved in said cases demand the exercise of sound administrative

[40] Emphasis and underscoring added.

[41] Emphasis and underscoring added.

discretion requiring special knowledge, experience, and services of the NCIP to determine technical and intricate matters of fact.[42] No less than the IPRA states that the NCIP is the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domain as well as their rights thereto,[43] with due regard to their beliefs, customs, traditions and institutions.[44] At this juncture, it is not amiss to state that the NCIP's decision shall be appealable to the Court of Appeals by way of a petition for review under Rule 43 of the Rules of Court.[45]

Meanwhile, the fatal flaw in petitioners' insistence that the NCIP's quasi-judicial jurisdiction is exclusive and original, can be gathered from records of the Bicameral Conference Committee cited in Justice Brion's Separate Opinion:

> The word "jurisdiction" in the first part of Section 66 is unqualified. Section 66 (then Section 71) of Senate Bill 1728 was originally worded *exclusive and original jurisdiction.* During the Bicameral Conference, the lower house objected to giving the NCIP *exclusive and original jurisdiction*:
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> | Sen. Juan Flavier: (Chairman of the Senate Panel) | There is exclusive original. And so what do you suggest? .... |
> | Rep. Zapata (Chairman of the Panel for the House of Representatives) | Chairman, may I butt in? |

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[42] *Phil Pharmawealth, Inc. v. Pfizer, Inc.,* 649 Phil. 423, 438 (2010), citing *Fabia v. Court of Appeals,* 437 Phil. 389, 402-403 (2002).

[43] IPRA, Section 38.

[44] IPRA, Section 39.

[45] IPRA, Section 67.

Sen. Flavier	Yes, please.
Rep. Zapata	This was considered. The original, we were willing in the house. But the "exclusive", we objected to the word "exclusive" because it would only be the commission that would exclude the court and the Commission may not be able to undertake all the review nationwide. **And so we remove the word "exclusive" so that they will have original jurisdiction but with the removal of the word "exclusive" that would mean that they may bring the case to the ordinary courts of justice.**
Sen. Flavier	Without passing through the commission?
Rep. Zapata	Yes, Anyway, if they go to the regular courts, they will have to litigate in court, because if its (sic) exclusive, that would be good.
Sen. Flavier	But what he is saying is that…
Rep. Zapata	But they may not have the facility.
Rep. _____	Senado *na lang.*
Rep. Zapata	*Oo, iyong original na lang.*
Sen. Flavier	**In other words, it's not only the Commission that can originate it, *pwedeng mag-originate sa courts.***

Rep. Zapata	Or else, we just remove "exclusive original" so that they will say, the National will have jurisdiction over claims. So we remove both "exclusive and original".
Sen. Flavier	So what version are you batting for, Mr. Chairman?
Rep. Zapata	Just to remove the word "exclusive original." **The Commission will still have jurisdiction only that, if the parties will opt to go to courts of justice, then this have** (sic) **the proper jurisdiction, then they may do so because we have courts nationwide.** Here there may be not enough courts of the commission.
Sen. Flavier	So we are going to adopt the senate version minus the words "exclusive original"?
Rep. Zapata	Yes, Mr. Chairman, that's my proposal
Sen. Flavier	No, problem. Okay, approved. xxx[46]

The Bicameral Committee's removal of the words "exclusive and original" mean that the NCIP shares concurrent jurisdiction with the regular courts. Thus, I agree with the revised *ponencia* that it would be *ultra vires* for the NCIP to promulgate rules and regulations stating that it has exclusive jurisdiction.[47]

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[46] Citing October 9, 1997 Bicameral Conference Meeting on the Disagreeing Provisions of SBN 1728 and 9125. (Emphasis in the original)

[47] Emphasis added; underscoring in the original.

Another cogent reason why the NCIP's quasi-judicial jurisdiction over claims and disputes involving rights of ICCs/IPs under Section 66 of the IPRA cannot be exclusive and original, is because of the so-called "Contentious Areas/Issues" identified in the Joint Department of Agriculture-Land Registration Authority-Department of Environment and Natural Resources-National Commission on Indigenous Peoples (*DAR-DENR-LRA-NCIP*) Administrative Order No. 01, Series of 2012.[48] Such contentious matters arose in the course of the implementation of the Comprehensive Agrarian Reform Law,[49] the IPRA, the Public Land Act,[50] and the Land Registration Act,[51] as amended by the Property Registration Decree,[52] which created not only issues of overlapping jurisdiction between the DAR, DENR and NCIP, but also operational issues and conflicting claims in the implementation of their respective programs.

Section 12 of the Joint DAR-DENR-LRA-NCIP Administrative Order defines those contentious areas/issues which are subject of operational issues and conflicting claims between and among the DAR, the DENR and the NCIP, as follows:

a. Untitled lands being claimed by the ICCs/IPs to be part of their AD/AL which are covered by approved survey plans and also being claimed by the DAR and/or the DENR.
b. Titled lands with registered Certificate of Land Ownership Awards (*CLOAs*), Emancipation Patents (*EPs*), and Patents within Certificate of Ancestral Domain

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[48] Subject: Clarifying, Restating and Interfacing the Respective Jurisdictions, Policies, Programs and Projects of the Department of Agrarian Reform (DAR), Department of Environment and Natural Resources (DENR), Land Registration Authority (LRA) and the National Commission on Indigenous Peoples (NCIP) in Order to Address Jurisdictional and Operational Issues Between and Among the Agencies.

[49] Republic Act No. 6657.

[50] Commonwealth Act No 141, as amended.

[51] Act No. 496.

[52] Presidential Decree No. 1529.

Title (*CADT*)/Certificate of Ancestral Land Title (*CALT*)/ Certificate of Ancestral Domain Claim (*CADC*)/ Certificate of Ancestral Land Claim (*CALC*).

c. Resource access/development instruments issued by the DENR over lands within Ancestral Land/Domain Claims such as, but not limited to, Community-Based Forest Management Agreement (*CBFMA*), Integrated Forest Management Agreement (*IFMA*), Socialized Forest Management Agreement (*SIFMA*), Protected Area Community-Based Resources Management Agreement (*PACBRMA*), Forest Land Grazing Management Agreement (*FLGMA*), Co-Management Agreement, Certificate of Stewardship Contract (*CSC*), Certificate of Forest Stewardship Agreement (*CFSA*), Wood Processing Plant Permit (*WPPP*), Special Land Use Permit (SLUP), Private Land Timber Permit (*PLTP*), Special Private Land Timber Permit (*SPLTP*), and Foreshore Lease Agreement/Permit (*FLA/FLP*).

d. Exploration Permit (*EP*), Financial or Technical Assistance Agreement (*FTAA*); Mineral Agreement (either Production Sharing, Co-Production or Joint Venture) issued within CARP-covered areas.

e. Reservations, proclamations and other special law-declared areas a portion or the entirety of which is subsequently issued a CADT/CALT.

f. Areas with existing and/or vested rights after the registration of the CADTs/CALTs but for any reason not segregated/excluded.

g. Other jurisdictional and operational issues that may arise between and amongst the DAR, the DENR and the NCIP as may be determined by the National/Regional/ Provincial Joint Committees, as created under Section 19 of the Joint Administrative Order.

h. Formal complaints filed by concerned ICCs/IPs or by the NCIP in behalf of the ICCs/IPs over those identified titled areas found within the AD/AL.

It is inevitable that disputes will arise involving the above-stated contentious areas/issues, and affecting the rights of parties who are non-IPs or those who belong to different ICCs/IPs groups. As a matter of fair play and due process, however, such parties cannot be compelled to comply with the two conditions[53] before such disputes may be brought before the NCIP under Section 66 of the IPRA, since IPs/ICCs are recognized to have their own separate and distinct customary laws and Council of Elders/Leaders. Hence, the Court cannot sustain the view that the NCIP shall have exclusive and original jurisdiction over all claims and disputes involving rights of ICCs/IPs.

Moreover, having in mind the principle that rules and regulations issued by administrative bodies to interpret the law which they are entrusted to enforce, have the force and effect of law, and are entitled to great respect,[54] the Court cannot ignore that Sections 14 and 16 of the Joint DAR-DENR-LRA-NCIP Administrative Order provide for the proper forum where the contentious areas/issues involve lands with prior and vested property rights, thus:

Section 14. Exclusion/Segregation of Lands Covered by Judicially Decreed Titles and Titles Administratively issued by DENR and DAR. In the delineation and titling of ADs/ALs, the NCIP must exclude and segregate all lands covered by titles. For this purpose, the registered owner of the land may opt to submit to the NCIP a copy of the title of the property to facilitate segregation or exclusion pursuant to existing guidelines and other pertinent issuances.

The ICCs/IPs, however, are not precluded from questioning the validity of these titles in a proper forum as hereunder enumerated:

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[53] Exhaustion of all remedies provided under customary laws, and the Certification issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved.

[54] *Estate of Nelson Dulay v. Aboitiz Jebsen Maritime Inc., et al.*, 687 Phil. 153, 162 (2012).

1. DAR Secretary for registered EPs or CLOAs; and
2. Regional Trial Court for registered patents/judicially-decreed titles.

On the other hand, the DAR and DENR shall not process titles pursuant to their mandate on lands certified by NCIP as ancestral domain or ancestral lands except in areas with prior and vested rights. Provided, however, that the certification by NCIP on lands as Ancestral Domains or Ancestral Lands pursuant to Section 52(i) of IPRA presupposes that the provision of Section 13 hereof on the projection of survey plans and issuance of Certification of Non-Overlap have already been complied with.

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Section 16. CARP Coverage of Titled Properties. Titled lands under the Torrens System issued prior to IPRA are deemed vested rights pursuant to the provision of Section 56 of IPRA. Accordingly, the DAR shall proceed with the CARP coverage of said lands, unless a Restraining Order is issued by the Supreme Court without prejudice, however, to the rights of the ICCs/IPs to question the validity of these titles before a court or body of competent jurisdiction.[55]

Note that the "property rights" referred to in Section[56] of the IPRA belong to those acquired by individuals, whether indigenous or non-indigenous peoples, as said provision makes no distinction as to the ethnic origins of the ownership of these rights.[57] Considering the rule on statutory construction that courts should not distinguish where the law does not do so, the IPRA thus recognizes and respects "vested rights" regardless of whether they pertain to IPs or non-IPs, and it only requires that these "property rights" already exist and/or vested upon its effectivity.[58]

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[55] Emphasis in the original; underscoring added.

[56] Sec. 56. *Existing Property Rights Regimes.*—Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected.

[57] *Cruz v. Secretary of Environment & Natural Resources*, 400 Phil. 904, 1080 (2000), Separate Opinion of Justice Santiago M. Kapunan.

[58] *Id.*

On petitioners' assertion that Section 72[59] of the IPRA negates the ruling that the NCIP has jurisdiction only over claims and disputes under Sections 52, 54, and 62 thereof, even if the parties involved do not belong to the same ICC/IP, the Court finds the same as misplaced.

Note that under Section 72 of the IPRA, any person who commits violation of any of the provisions of the IPRA may be punished either (1) in accordance with the customary laws of the ICCs/IPs concerned, provided that the penalty shall not be a cruel, degrading or inhuman punishment, and that neither death penalty nor excessive fines shall be imposed; or (2) upon conviction, by imprisonment of not less than 9 months but not more than 12 years, or a fine of not less than ₱100,000.00 nor more than ₱500,000.00, or both such fine and imprisonment upon the discretion of the court. Again, it would be contrary to the principles of fair play and due process for those parties who do not belong to the same ICC/IP group to be subjected to its separate and distinct customary laws, and to be punished in accordance therewith. The Court thus rules that the NCIP shall have primary jurisdiction over violations of IPRA provisions only when they arise between or among parties belonging to the same ICC/IP group. When the parties belong to different

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[59] Section 72. *Punishable Acts and Applicable Penalties*. — **Any person who commits violation of any of the provisions of this Act, such as, but not limited to, unauthorized and/or unlawful intrusion upon any ancestral lands or domains as stated in Sec. 10, Chapter III, or shall commit any of the prohibited acts mentioned in Sections 21 and 24, Chapter V, Section 33, Chapter VI hereof, shall be punished in accordance with the customary laws of the ICCs/IPs concerned**: *Provided*, That no such penalty shall be cruel, degrading or inhuman punishment: *Provided*, *further*, That neither shall the death penalty or excessive fines be imposed. This provision shall be without prejudice to the right of any ICCs/IPs to avail of the protection of existing laws. In which case, any person who violates any provision of this Act shall, upon conviction, be punished by imprisonment of not less than nine (9) months but not more than twelve (12) years or a fine of not less than One hundred thousand pesos (₱100,000) nor more than Five hundred thousand pesos (₱500,000) or both such fine and imprisonment upon the discretion of the court. In addition, he shall be obliged to pay to the ICCs/IPs concerned whatever damage may have been suffered by the latter as a consequence of the unlawful act. (Emphasis and underscoring added)

ICC/IP group or where one of the parties is a non-ICC/IP, jurisdiction over such violations shall fall under the proper Regional Trial Court.

Justice Brion has aptly discussed that even if Section 72 of the IPRA is a special penal law that applies to all persons, including non-ICCs/IPs, the NCIP jurisdiction over violations of ICC/IP rights is limited to those committed by and against members of the same ICC/IP group, thus:

> Section 72 of the IPRA provides that *any person* who violates the rights of ICCs/IPs shall be punished "in accordance with the customary laws of the ICCs/IPs concerned. . . . *without prejudice* to the right of the ICC/IP concerned to avail of the protection of "*existing laws*. . .*[i]n which case*," the penalty shall be imprisonment and/or fine, and damages, *"upon the discretion of the court*."
>
> "Existing laws" refer to national laws as opposed to customary laws; while "the court" refers to the regular courts as opposed to administrative bodies like the NCIP.
>
> Under Section 72, ICCs/IPs can avail of the protection under *national laws* and file an action before the *regular courts*, in which case, the penalty shall be imprisonment and/or fine, and damages. ***From this perspective, Section 72 is a special penal law that applies to ALL persons, including non-ICCs/IPs***.
>
> The phrase "without prejudice," however, means without limiting the course of action that one can take. Thus, a recourse under customary laws does not take away the right of ICCs/IPs to secure *punishment under existing national laws*. An express caveat under the customary law option is that the penalty must not be cruel, degrading, or inhuman, nor shall it consist of the death penalty or excessive fines.
>
> Since the regular courts, not the NCIP, have jurisdiction over national laws, then the NCIP's jurisdiction is limited to punishment under customary laws.
>
> *The NCIP's power to impose penalties under customary laws presents two important issues:* ***first****, whether it is legally possible to punish non-ICCs/IPs with penalties under customary laws; and* ***second****, whether a member of a particular ICC/IP could be punished in accordance with the customary laws of another ICC/IP*.

Laws that provide for fines, forfeitures, or *penalties* for their violation or otherwise impose a burden on the people, such as tax and revenue measures, must be published.

Most customary laws are not written, much less published. Hence, it is highly unlikely that the NCIP or even the regular courts have the power to penalize non-ICCs/IPs with these *penalties* under customary laws. A contrary ruling would be constitutionally infirm for lack of due process.

Similarly, an ICC/IP cannot be punished under the customary law of another. Otherwise, the former would be forced to observe a non-binding customary law.

Therefore, while the NCIP has jurisdiction over violations of ICC/IP rights, its jurisdiction is limited to those committed by and against members of the same ICC/IP.

This view does not detract from the IPRA's policy to "protect the rights of ICCs/IPs." ICCs/IPs, whose rights are violated by non-ICCs/IPs or by members of a different ICC/IP, can still file criminal charges before the regular courts. In this situation, the NCIP's role is not to adjudicate but to provide ICCs/IPs with "legal assistance in litigation involving community interest."[60]

There is also no merit in petitioners' argument that the Court's interpretation of the NCIP's jurisdiction under Section 66 of the IPRA runs counter to its purpose to protect the rights, customs, customary laws and cultural integrity of the ICCs/IPs. To stress, even as Section 66 grants jurisdiction to the NCIP over claims and disputes involving rights of ICCs/IPs, it is required that the opposing parties are both ICCs/IPs who have exhausted all their remedies under their customs and customary law before bringing their claim and dispute to the NCIP.[61] And, in some instances that the regular courts may exercise jurisdiction over cases involving rights of ICCs/IPs, the governing law for such disputes necessarily include the IPRA and the rights the law bestows on ICCs/IPs.[62]

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[60] Citations omitted; Italics and emphasis in the original.

[61] *Lim v. Gamosa, supra* note 18.

[62] *Id.*

It also bears emphasis that the right of ICCs/IPs to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanism under Section 15[63] of the IPRA pertains only to those customary laws and practices within their respective communities, as may be compatible with the national legal system and with internationally recognized human rights. In this regard, it is fitting to quote the Separate Opinion of Justice Santiago M. Kapunan in *Cruz v. Secretary of Environment & Natural Resources*[64] on the constitutionality of Sections 63, 65 and other related provisions, like Section 15, of the IPRA:

> Anent the use of customary laws in determining the ownership and extent of ancestral domains, suffice it to say that such is allowed under paragraph 2, Section 5 of Article XII of the Constitution. Said provision states, "The Congress may provide for the applicability of customary laws governing property rights and relations in determining the ownership and extent of the ancestral domains." Notably, the use of customary laws under IPRA is not absolute, for the law speaks merely of *primacy of use*. xxx
>
> x x x x x x x x x
>
> The application of customary law is *limited to disputes concerning property rights or relations in determining the ownership and extent of the ancestral domains*, where all the parties involved are members of indigenous peoples, specifically, of the same indigenous group. It therefore follows that when one of the parties to a dispute is a non-member of an indigenous group, or when the indigenous peoples involved belong to different groups, the application of customary law is not required.
>
> Like any other law, the objective of IPRA in prescribing the primacy of customary law in disputes concerning ancestral lands and domains where all parties involved are indigenous peoples is justice. The utilization of customary laws is in line with the constitutional policy of recognizing the application thereof through legislation passed by Congress.

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[63] Section 15. *Justice System, Conflict Resolution Institutions, and Peace Building Processes.*—The ICCs/IPs shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanism and other customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognized human rights.

[64] *Supra* note 57.

Furthermore, the recognition and use of customary law is not a novel idea in this jurisdiction. Under the Civil Code, use of customary law is sanctioned, as long as it is proved as a fact according to the rules of evidence, and it is not contrary to law, public order or public policy. Moreover, the Local Government Code of 1991 calls for the recognition and application of customary laws to the resolution of issues involving members of indigenous peoples. This law admits the operation of customary laws in the settling of disputes if such are ordinarily used in *barangays* where majority of the inhabitants are members of indigenous peoples.[65]

Likewise, unavailing is petitioners' contention that unresolved claims and disputes between different ICCs/IPs groups, and those between ICCs/IPs and non-ICCs/IPs should fall under the jurisdiction of the NCIP. In this regard, the Court shares the view of Justice Perez:

That the proviso found in Section 66 of the IPRA is exclusionary, specifically excluding disputes involving rights of IPs/ICCs where the opposing party is non-ICC/IP, is reflected in the IPRA's emphasis of customs and customary law to govern in the lives of the ICCs/IPs.

Indeed, **non-ICCs/IPs cannot be subjected to the special and limited jurisdiction of the NCIP even if the dispute involves rights of ICCs/IPs since the NCIP has no power and authority to decide on a controversy involving as well rights of non-ICCs/IPs which may be brought before a court of general jurisdiction within the legal bounds of rights and remedies**. Even as a practical concern, non-IPs and non-members of ICCs ought to be excepted from the NCIP's competence since it cannot determine the right-duty correlative, and breach thereof, between opposing parties who are ICCs/IPs and non-ICCs/IPs, the controversy necessarily contemplating application of other laws, not only customs and customary law of the ICCs/IPs. In short, the NCIP is only vested with jurisdiction to determine the rights of ICCs/IPs based on customs and customary law in a given controversy against another ICC/IP, but not the applicable law for each and every kind of ICC/IP controversy even against an opposing non-ICC/IP.[66]

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[65] *Cruz v. Secretary of Environment and Natural Resources, supra,* at 1084-1085. (Citations omitted)

[66] Emphasis in the original.

Anent what Justice Perez described as the "implicit affirmation" done in *The City Government of Baguio City v. Masweng*[67] of the NCIP's jurisdiction over cases where one of the parties is not ICC/IPs, a careful review of that case would show that the Court merely cited Sections 3(k),[68] 38[69] and 66 of the IPRA and Section 5[70] of NCIP Administrative Circular No. 1-03 dated April 9, 2003, known as the Rules on Pleadings, Practice and Procedure Before the NCIP, as bases of its ruling to the effect that disputes or controversies over ancestral lands/domains of ICCs/IPs are within the original and exclusive jurisdiction of the NCIP-RHO. However, the Court did not identify and elaborate on the statutory basis of the NCIP's "original and exclusive jurisdiction" on disputes or controversies over ancestral lands/domains of ICCs/IPs. Hence, such description of the nature and scope of the NCIP's jurisdiction made without argument or full consideration of the point, can only be considered as an *obiter dictum*, which is a mere expression of an opinion

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[67] *Supra.*

[68] Section 3. *Definition of Terms.*—For purposes of this Act, the following terms shall mean:

xxx xxx xxx

k) *National Commission on Indigenous Peoples (NCIP)* – refers to the office created under this Act, which shall be under the Office of the President, and which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to recognize, protect and promote the rights of ICCs/IPs;

[69] Section 38. *National Commission on Indigenous Cultural Communities/ Indigenous Peoples (NCIP).*—To carry out the policies herein set forth, there shall be created the National Commission on ICCs/IPs (NCIP), which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domain as well as their rights thereto.

[70] Section 5. *Jurisdiction of the NCIP*. – The NCIP through its Regional Hearing Offices shall exercise jurisdiction over all claims and disputes involving rights of ICCs/IPs and all cases pertaining to the implementation,

with no binding force for purposes of *res judicata* and does not embody the determination of the court.[71]

On a final note, the Court restates that under Section 66 of the IPRA, the NCIP shall have limited jurisdiction over claims and disputes involving rights of IPs/ICCs only when they arise between or among parties belonging to the same ICC/IP group; but if such claims and disputes arise between or among parties who do not belong to the same ICC/IP group, the proper regular courts shall have jurisdiction. However, under Sections 52(h) and 53, in relation to Section 62 of the IPRA, as well as Section 54, the NCIP shall have primary jurisdiction over adverse claims and border disputes arising from the delineation of ancestral domains/lands, and cancellation of fraudulently-issued CADTs, regardless of whether the parties are non-ICCs/IPs, or members of different ICCs/IPs groups, as well as violations of ICCs/IPs rights under Section 72 of the IPRA where both parties belong to the same ICC/IP group.

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enforcement, and interpretation of R.A. 8371, including but not limited to the following:

(1) *Original and Exclusive Jurisdiction of the Regional Hearing Office (RHO)*a. Cases involving disputes and controversies over ancestral lands/domains of ICCs/IPs;

x x x x x x x x x

(2) *Original Jurisdiction of the Regional Hearing Officer:*

a. Cases affecting property rights, claims of ownership, hereditary succession, and settlement of land disputes, between and among ICCs/IPs that have not been settled under customary laws; and

x x x x x x x x x

(3) *Exclusive and Original Jurisdiction of the Commission:*

a. Petition for cancellation of Certificate of Ancestral Domain Titles/Certificate of Ancestral Land Titles (CADTs/CALTs) alleged to have been fraudulently acquired by, and issued to, any person or community as provided for under Section 54 of R.A. 8371. Provided that such action is filed within one (1) year from the date of registration.

[71] *Land Bank of the Philippines v. Suntay*, 678 Phil. 879, 913-914 (2011).

WHEREFORE, the Motion for Reconsideration and the Supplemental Motion for Reconsideration are **DENIED** for lack of merit.

SO ORDERED.

Sereno, C.J.(Chairperson), Carpio, Velasco, Jr., Leonardo-de Castro, Bersamin, del Castillo, Mendoza, Reyes, Perlas-Bernabe, Jardeleza, Caguioa, Martires, and *Tijam, JJ.,* concur.

Leonen, J., see separate concurring opinion.

CONCURRING OPINION

LEONEN, *J.*:

I maintain my concurrence with the well written opinion of Justice Diosdado M. Peralta clarifying the application of Section 66[1] of Republic Act No. 8371, otherwise known as the Indigenous Peoples' Rights Act of 1997. I can do no better than to reiterate his words:

> After a circumspect review of the relevant laws and jurisprudence, the Court maintains that the jurisdiction of the NCIP under Section 66 of the IPRA is limited [to] claims and disputes involving rights of IPs/ICCs where both parties belong to the same ICC/IP group, but if such claims and disputes arise between or among parties who do not belong to the same ICC/IP group, the proper regular courts shall have jurisdiction.[2]

In my concurrence to the original decision, I pointed out that this was premised on Section 66 of the Indigenous Peoples' Rights

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[1] Rep. Act No. 8371, Sec. 66 provides:

> Section 66. *Jurisdiction of the NCIP*. - The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs: *Provided, however*, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

[2] *Ponencia*, p. 9.

Act, which has required that "no [claims and disputes involving rights of indigenous cultural communities/indigenous peoples] shall be brought to the National Commission on Indigenous Peoples (NCIP) unless the parties have exhausted all remedies provided under their customary laws."[3] The primacy given to customary laws assumes membership in the same ethnolinguistic group that have been and still are practicing the same customary norms not contrary to law.

Thus, Section 66 of the Indigenous Peoples' Rights Act will apply to parties belonging to the same Kankanaey group in Besao, Mountain Province. However, it cannot apply to disputes between a Hanunoo Mangyan from Mindoro and a B'laan from Tampakan in Sultan Kudarat. Its application to various tribes in Kalinga depends on whether they share the same customary norms. While the various indigenous communities in Kalinga may belong to the same ethnolinguistic grouping, they may not share the same norms. The same is equally true among the various subtribes of the Subanen in the Zamboanga Peninsula.

Definitely, Section 66 of the Indigenous Peoples' Rights Act does not apply in this case, where one of the parties do not belong to the same ethnolinguistic group as the other.

I

More importantly, the Indigenous Peoples' Rights Act cannot be interpreted as a charter that removes all minoritized Filipinos from the workings and application of the national legal system. Persons and groups belonging to what is still now considered as indigenous cultural communities/indigenous peoples interact with other cultures who consider themselves as Filipinos. To my knowledge, the Indigenous Peoples' Rights Act is an exemplary social legislation that should assist members of indigenous cultural communities to be empowered in all their relationships. The statute was not designed to facilitate their continued social and cultural isolation. The Indigenous Peoples' Rights Act shouid not cause their further marginalization.

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[3] Rep. Act No. 8371, Sec. 66.

To insist that the NCIP has the sole and exclusive jurisdiction in any conflict involving indigenous cultural communities/ indigenous peoples is to insist on a dangerous and debilitating stereotype. It is to assume that no indigenous cultural communities/indigenous peoples have intellectual or moral resource to deal with outsiders on equal footing in regular courts of justice. It is also to insist that our regular judges should not inform themselves of the concerns of indigenous peoples or that they cannot acquire the cultural sensitivity to be able to resolve conflicts among indigenous peoples fully and fairly. Insisting that the NCIP should exclusively deal with all conflicts between and among indigenous cultural communities/indigenous peoples for so long as there is a member of ani indigenous cultural communities/indigenous peoples involved creates an unnecessary artificial enclave that maintains the insidious caricatures of backward peoples insisted by our colonial past. Indigenous peoples are not that strange that they cannot deal with or be dealt with by regular courts. To insist otherwise is to betray the desire of empowerment implicit in the Indigenous Peoples' Rights Act.

II

There is also another equally important Constitutional principle at stake in our interpretation of Section 66 of the Indigenous Peoples' Rights Act. This pertains to the extent of the power of Congress to create enclaves of administrative bodies with quasi-judicial jurisdiction removing from the judiciary conflicts, which it should constitutionally adjudicate.

The traditional justification of the grant of quasi-judicial powers to administrative bodies under the control and supervision of the Executive was that it was necessary to be able to deal with the perceived complexities of modem life. There was recognition that the resolution of some conflicts required technical expertise for which judges in regular courts were not equipped.

However, there is a trend towards the specialization of regular courts of justice. Today, we have specialized Family Courts,[4] environmental salas,[5] and commercial courts, among others. Recently, we authorized the designation of specialized cybercrime courts.[6]

Furthermore, under the supervision of the Supreme Court, we have the Philippine Judicial Academy (PHILJA) that routinely holds courses on very specialized subjects. The requirements for taking the bar have been liberalized. Consequently, the basic training of judges is now different from what it was when this Court found the basis for quasi-judicial jurisdiction. Now, we have judges who are also trained engineers, molecular biologists, math majors, economists, and psychologists, apart from those who specialize in political science or philosophy. While administrative agencies with quasi-judicial powers were an initial modality to deal with modernity, they would not be the only exclusive approach.

In my view, the power of the Judiciary to adjudicate remains vulnerable unless we shape the parameters for granting quasi-judicial jurisdiction to administrative agencies with greater clarity and precision. The grant of judicial power to the Judiciary cannot be undermined by Congressional action through the unbounded transfer of adjudicatory powers to quasi-judicial administrative agencies.

In my view, controversies may be adjudicated by administrative agencies only when the resolution of conflicts among parties are

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[4] Rep. Act No. 8369, Sec. 3 provides:

Section 3. *Establishment of Family Courts*. - There shall be established a Family Court in every province and city in the country. In case where the city is the capital of the province, the Family Court shall be established in the municipality which has the highest population.

[5] Supreme Court Adm. O. No. 23-08 (2008), Designation of Special Courts to Hear, Try and Decide Environmental Cases.

[6] Adm. Matter No. 03-03-03-SC, Designating Certain Branches of the Regional Trial Courts to Try and Decide Cybercrime Cases Under Republic Act No. 10175.

necessary in order that the Executive department can implement a program mandated by law. For instance, conflicting applications of two (2) applicants to the same bandwidth may be settled by an administrative body because it is necessary to comply with the standards and procedures for allocating a scarce resource. In the same manner, a controversy between two (2) mining companies over the same meridional blocks should be settled first by an administrative agency to allow the Executive to determine the company that will assist in the enjoyment and exploitation of our mineral resources under a production sharing or joint venture arrangement within the limitations provided by law. Conflicting claims between two (2) groups of farmers claiming tenancy rights or the status of agrarian reform beneficiaries must be settled by an administrative agency so that the owners of a Certificate of Land Ownership Award (CLOA) could be determined. This is instrumental to achieve the objectives of the agrarian reform program set by the Constitution and specified by law.

It is not only that the resolution of a conflict requires specialized knowledge. In order that adjudication can be constitutionally carved out of the judicial sphere and initially put within administrative purview, there must also be a clear showing that the resolution of the conflict is necessary to pursue the implementation of a program provided by law.

This will be absent if our interpretation of Section 66 of the Indigenous Peoples' Rights Act is that the NCIP should have jurisdiction in any and all conflicts for so long as one (1) party belongs to an indigenous cultural communities/indigenous peoples group. In many of these controversies, it may not even be specialized knowledge in customary law involved but simply general knowledge in existing law. This is the situation in the present case.

IV

This Court's decision in this case should only be limited to what is necessary to resolve the conflict as presented by the facts. Any other interpretation of any other provision of the Indigenous Peoples' Rights Act or the implementing rules promulgated by

the NCIP or jointly with any other department might foreclose the proper interpretation when facts, which we cannot now foresee, present themselves.

For instance, no provision of the Joint Administrative Order No. 1 of the DAR-DENR-LRA-NCIP on "contentious issues" is in controversy in this case. It would be premature to hazard any correct interpretation of any of its provisions absent an actual case. Our opinion may be construed as binding although only obiter. We cannot render advisory opinions risking our institutional inability to foresee all possible factual permutations.

Thus, where registered emancipation patents or CLOA's may be questioned should be the proper subject of another case where the facts will properly be laid. It is possible that a Torrens title has been issued or that extrinsic fraud will be present. We cannot yet state, as a rule, that the jurisdiction of the Department of Agrarian Reform Secretary is more definitive as compared with the jurisdiction of a Regional Trial Court applying the provisions of Presidential Decree 1529.

Furthermore, the penalties provided by the Indigenous Peoples' Rights Act is not in issue in this case. It may not have been properly pleaded. The danger is that it may foreclose future discussion as to the validity of any of its related provisions.

I recommend that we keep within the narrow bounds of the issues presented in this case. It is sufficient to state that Section 66 of the Indigenous Peoples' Rights Act is not basis to hold that the NCIP has jurisdiction over a conflict between a member of an indigenous cultural communities/indigenous peoples and a non-member of the same indigenous cultural communities/indigenous peoples.

ACCORDINGLY, I vote to deny the Motion for Reconsideration.

EN BANC

[G.R. No. 207246. April 18, 2017]

JOSE M. ROY III, *petitioner, vs.* **CHAIRPERSON TERESITA HERBOSA, THE SECURITIES AND EXCHANGE COMMISSION, and PHILIPPINE LONG DISTANCE TELEPHONE COMPANY,** *respondents.*

WILSON C. GAMBOA, JR., DANIEL V. CARTAGENA, JOHN WARREN P. GABINETE, ANTONIO V. PESINA, JR., MODESTO MARTIN Y. MAMON III, and GERARDO C. EREBAREN, *petitioners-in-intervention,*

PHILIPPINE STOCK EXCHANGE, INC., *respondent-in-intervention,*

SHAREHOLDERS' ASSOCIATION OF THE PHILIPPINES, INC., *respondent-in-intervention.*

SYLLABUS

1. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; PUBLIC UTILITY ENTITIES; CITIZENSHIP REQUIREMENT; THE FULL AND LEGAL BENEFICIAL OWNERSHIP OF SIXTY PERCENT OF THE OUTSTANDING CAPITAL STOCK, COUPLED WITH SIXTY PERCENT OF THE VOTING RIGHTS MUST REST IN THE HANDS OF FILIPINO NATIONALS.— The heart of the controversy is the interpretation of Section 11, Article XII of the Constitution, which provides: "No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens x x x." [W]hat the Constitution requires is "[f]ull [and legal] beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights x x x must rest in the hands of Filipino nationals x x x." **And, precisely**

that is what SEC-MC No. 8 provides, *viz.*: "x x x For purposes of determining compliance [with the constitutional or statutory ownership], the required percentage of Filipino ownership shall be applied to BOTH (a) the total number of outstanding shares of stock entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote x x x."

2. ID.; ID.; ID.; ID.; BENEFICIAL OWNER OR BENEFICIAL OWNERSHIP OF STOCK; EXPLAINED.— [T]he definition of "beneficial owner or beneficial ownership" in the SRC-IRR, which is in consonance with the concept of "full beneficial ownership" in the FIA-IRR, is x x x relevant in resolving only the question of who is the beneficial owner or has beneficial ownership of each "specific stock" of the public utility company whose stocks are under review. **If** the Filipino has the **voting power** of the "specific stock", *i.e.*, he can **vote** the stock or direct another to vote for him, or the Filipino has the **investment power** over the "specific stock", *i.e.*, he can **dispose** of the stock or direct another to dispose of it for him, or both, *i.e.*, he can **vote and dispose** of that "specific stock" or direct another to vote or dispose it for him, **then** such Filipino is the "beneficial owner" of that "specific stock." Being considered Filipino, that "specific stock" is then to be counted as part of the 60% Filipino ownership requirement under the Constitution. The right to the dividends, *jus fruendi* – a right emanating from ownership of that "specific stock" necessarily accrues to its Filipino "beneficial owner."

3. ID.; ID.; ID.; ID.; THE PURPOSE THEREOF IS TO PREVENT ALIENS FROM ASSUMING CONTROL OF PUBLIC UTILITIES, WHICH MAY BE INIMICAL TO THE NATIONAL INTEREST.— [T]he evident purpose of the citizenship requirement is to prevent aliens from assuming control of public utilities, which may be inimical to the national interest. This purpose prescinds from the "benefits"/dividends that are derived from or accorded to the particular stocks held by Filipinos vis-a-vis the stocks held by aliens. So long as Filipinos have controlling interest of a public utility corporation, their decision to declare more dividends for a particular stock over other kinds of stock is their sole prerogative – an act of ownership that would presumably be for the benefit of the public utility corporation itself.

VELASCO, JR., *J.*, *concurring opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT AGENCIES; SECURITIES AND EXCHANGE COMMISSION; BETTER-SUITED TO FAIRLY RULE, AFTER A FULL-BLOWN INVESTIGATION, ON THE COMPLIANCE BY CORPORATE UTILITIES WITH THE NATIONALITY REQUIREMENT, IT BEING THE GOVERNMENT AGENCY SPECIFICALLY TASKED TO REVIEW CORPORATE MATTERS.— [N]ot being a trier of facts nor specially equipped to investigate the intricacies of corporate structures and the identities of capital market participants, this Court cannot declare a corporation as non-compliant with the nationality requirement by, without more, a mere cursory review of its General Information Sheets. With the drastic consequences of such a ruling, which includes the possible revocation of its franchise, all parties affected—the corporate public utility, its investors both in equity and debt, and all its other stakeholders—deserve more than a passing treatment by this Court. The SEC, the government agency specifically tasked to review corporate matters, is better-suited to fairly rule, after a full-blown investigation, on the compliance by corporate public utilities with the nationality requirement.

2. ID.; NATIONAL ECONOMY AND PATRIMONY; PUBLIC UTILITY ENTITIES; CITIZENSHIP REQUIREMENT; CAPITAL IS CONSTRUED AS EQUIVALENT TO THE SHARES OF STOCKS ENTITLED TO VOTE IN THE ELECTION OF DIRECTORS.— [I]n *Gamboa*, this Court construed "capital" as equivalent to the "**shares of stock entitled to vote in the election of directors**" and so, sustaining the petitioner's contention that it is through voting that control over a corporation is exercised, it ruled that 60% of the **voting shares** or the **"shares of stock entitled to vote in the election of directors"** in corporate public utilities are reserved for Filipinos. x x x Thus, the Court cannot now feign that the construction in *Gamboa* of the term "capital" is confined and limited only to "common shares," to the exclusion of voting preferred shares. Adopting this regrettably myopic view will certainly revise and alter the final decision and resolution in *Gamboa*.

CARPIO, *J.*, *dissenting opinion*:

1. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; PUBLIC UTILITY ENTITIES; CITIZENSHIP REQUIREMENT; THE SIXTY PERCENT FILIPINO OWNERSHIP APPLIES UNIFORMLY TO EACH CLASS OF SHARES.— [T]he 60 percent minimum Filipino ownership refers not only to voting rights but likewise to full beneficial ownership of the stocks. x x x [T]he 60 percent Filipino ownership applies uniformly to each class of shares. Such interpretation ensures effective control by Filipinos of public utilities, as expressly mandated by the Constitution. x x x PLDT's capital structure, as well as the disparity in the declared dividends between common and voting preferred shares, illustrates clearly the anomaly which will result in the interpretation by the SEC of the *Gamboa Decision* and *Resolution*. Applying the 60 percent Filipino ownership to the total voting stock and to the total outstanding stock, whether voting or non-voting, and not to each class of shares of PLDT clearly amounts to a blatant mockery of the Constitution.

2. REMEDIAL LAW; ACTIONS; JUDGMENTS; A DECISION MUST BE CONSIDERED IN ITS ENTIRETY TO GRASP AND DELVE INTO ITS TRUE INTENT AND MEANING.— To avoid absurdity, and more importantly, to uphold the spirit and language of the Constitution, the Court is not only allowed, but is bound, to clarify, even rectify, any apparent conflict in its decisions. To grasp and delve into the true intent and meaning of a decision, no specific portion thereof should be resorted to – the decision must be considered in its entirety. x x x To refuse to clarify the dispositive portion of the *Gamboa Decision*, invoking conclusiveness of judgment and *obiter dictum*, among other things, is to shirk from this Court's sworn duty to uphold the Constitution. Consequently, the Court must reject the SEC's flimsy argument that the SEC's task is merely to implement the Court's directive as contained in the dispositive portion of the *Gamboa Decision*. Following such contention, the SEC deliberately ignores the crucial pronouncements of the Court in the body of the *Gamboa Decision* and *Resolution*.

LEONEN, *J.*, *dissenting opinion*:

1. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; PUBLIC UTILITY ENTITIES;

CITIZENSHIP REQUIREMENT; CAPITAL MUST BE CONSTRUED IN SUCH A MANNER AS TO SECURE THE CONTROLLING INTEREST IN FAVOR OF FILIPINOS.— [L]imiting the conception of "capital" vis-a-vis foreign equity participation in public utilities under Article XII, Section 11 of the 1987 Constitution only to shares of stock entitled to vote for directors in a corporation fails to adequately effect the Constitution's dictum. Rather than guarding our patrimony, it has opened the door for foreign control of corporations engaged in nationalized economic activities. In keeping with the primacy of our patrimony and the charge of a "self-reliant and independent national economy," capital must be construed in such a manner as to secure "the controlling interest in favor of Filipinos." To limit capital to so-called voting shares is to be shortsighted. It fails to account for the reality that every class of shares exercises a measure of control over a corporation. Even so-called non-voting shares vote and may be pivotal in the most crucial corporate actions. x x x The majority's limitation of capital to so-called voting stocks entrenches an operational definition that can be a gateway to violating the Constitution's righteous protection of our heritage. It licentiously empowers foreign interests to overrun public utilities, which are enterprises whose primary objectives should be the common good and not commercial gain, to wrest control of rights to our natural resources, and to takeover other crucial areas of investment.

2. ID.; ID.; ID.; ID.; BENEFICIAL OWNERSHIP; MEANS HAVING OR SHARING VOTING POWER, AND HAVING OR SHARING INVESTMENT RETURNS OR POWER.— The constitutional imperative demands a consideration not just of nominal power and control or the identification of which shares are denominated as "voting" and "non-voting", but equally of beneficial ownership. The implementing rules and regulations (amended 2004) of Republic Act No. 8799, the Securities Regulation Code (SRC), define "beneficial owner or beneficial ownership." It identifies the two (2) facets of beneficial ownership: first, having or sharing voting power; second, having or sharing investment returns or power x x x. The concept of beneficial ownership uncovers that control is not entirely the end of participating in a stock corporation. As stock corporations are fundamentally business organizations, participating in their affairs by partaking in ownership is ultimately a matter of reaping gains from investments.

3. ID.; ID.; ID.; ID.; CONTROL TEST AND GRANDFATHER RULE; ENABLE AN ADEQUATE MECHANISM FOR STATE ORGANS TO EXAMINE WHETHER A STOCK CORPORATION IS EFFECTIVELY CONTROLLED AND BENEFICIALLY OWNED BY FILIPINOS.— Consistent with the composite character of stock ownership and impelled by the need to equip state organs with the most efficacious means for conserving our heritage are the correlative mechanisms of the Control Test and the Grandfather Rule. These are the guideposts through which foreign participation in nationalized economic activities is reckoned. Together, the Control Test and the Grandfather Rule enable an adequate mechanism for state organs to examine whether a stock corporation is *effectively* controlled and *beneficially* owned by Filipinos. x x x [T]he Control Test finds initial application and "must govern in reckoning foreign equity ownership in corporations engaged in nationalized economic activities." Further, "the Grandfather Rule may be used as a supplement to the Control Test, that is, as a further check to ensure that control and beneficial ownership of a corporation is in fact lodged in Filipinos." The correlation between the Control Test and the Grandfather Rule – where the former finds initial application, and the latter supplements – is settled in jurisprudence x x x.

4. ID.; ID.; ID.; ID.; GRANDFATHER RULE; INTENDED TO FRUSTRATE THE USE OF OSTENSIBLE EQUITY OWNERSHIP AS AN ARTIFICE FOR CIRCUMVENTING THE CONSTITUTIONAL IMPERATIVE OF DEVELOPING AN INDEPENDENT NATIONAL ECONOMY.— Characterizing the Grandfather Rule as a "supplement" or as a "*further* check" is not understating its importance. Precisely, the Grandfather Rule is intended to frustrate the use of ostensible equity ownership as an artifice for circumventing the constitutional imperatives of "conserv[ing] and develop[ing] our patrimony" and "develop[ing] a self-reliant and independent national economy." x x x The Grandfather Rule enables the piercing of ostensible control vested by ownership of 60% of a corporation's capital when methods are employed to disable Filipinos from exercising control and reaping the economic benefits of an enterprise. This – more assiduous – examination of who actually controls and benefits from holding such capital

> may very well be a jealous means of protecting our patrimony, but fending off the challenges to our national integrity demands it. The application of the Grandfather Rule hinges on circumstances. It is an extraordinary mechanism the operation of which is impelled by a reasonable sense of doubt that even as 60% of a corporation's capital is ostensibly owned by Filipinos, a more scrupulous arrangement may underlie that compliance and that nominal Filipino owners have become parties to the besmirching of their own national integrity. x x x '[D]oubt' refers to various indicia that the 'beneficial ownership' and 'control' of the corporation do not in fact reside in Filipino shareholders but in foreign stakeholders." It is necessary then, that proper evidentiary bases sustain resort to the Grandfather Rule.

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R E S O L U T I O N

CAGUIOA, *J.*:

Before the Court is the Motion for Reconsideration dated January 19, 2017[1] (the Motion) filed by petitioner Jose M. Roy III (movant) seeking the reversal and setting aside of the Decision dated November 22, 2016[2] (the Decision) which denied the movant's petition, and declared that the Securities and Exchange Commission (SEC) did not commit grave abuse of discretion in issuing Memorandum Circular No. 8, Series of 2013 (SEC-

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[1] *Rollo* (Vol. II), pp. 1262-1277.

[2] Decision, *id*. at 1154-1189.

MC No. 8) as the same was in compliance with, and in fealty to, the decision of the Court in *Gamboa v. Finance Secretary Teves*,[3] (*Gamboa* Decision) and the resolution[4] denying the Motion for Reconsideration therein (*Gamboa* Resolution).

The Motion presents no compelling and new arguments to justify the reconsideration of the Decision.

The grounds raised by movant are: (1) He has the requisite standing because this case is one of transcendental importance; (2) The Court has the constitutional duty to exercise judicial review over any grave abuse of discretion by any instrumentality of government; (3) He did not rely on an *obiter dictum*; and (4) The Court should have treated the petition as the appropriate device to explain the *Gamboa* Decision.

The Decision has already exhaustively discussed and directly passed upon these grounds. Movant's petition was dismissed based on both procedural and substantive grounds.

Regarding the procedural grounds, the Court ruled that petitioners (movant and petitioners-in-intervention) failed to sufficiently allege and establish the existence of a case or controversy and *locus standi* on their part to warrant the Court's exercise of judicial review; the rule on the hierarchy of courts was violated; and petitioners failed to implead indispensable parties such as the Philippine Stock Exchange, Inc. and Shareholders' Association of the Philippines, Inc.[5]

In connection with the failure to implead indispensable parties, the Court's Decision held:

> Under Section 3, Rule 7 of the Rules of Court, an indispensable party is a party-in-interest without whom there can be no final determination of an action. Indispensable parties are those with such a material and direct interest in the controversy that a final decree would necessarily affect their rights, so that the court cannot proceed

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[3] 668 Phil. 1 (2011).

[4] *Heirs of Wilson P. Gamboa v. Finance Sec. Teves*, 696 Phil. 276 (2012).

[5] Decision, *rollo* (Vol. II), pp. 1160-1166.

without their presence. The interests of such indispensable parties in the subject matter of the suit and the relief are so bound with those of the other parties that their legal presence as parties to the proceeding is an absolute necessity and a complete and efficient determination of the equities and rights of the parties is not possible if they are not joined.

Other than PLDT, the petitions failed to join or implead other public utility corporations subject to the same restriction imposed by Section 11, Article XII of the Constitution. These corporations are in danger of losing their franchise and property if they are found not compliant with the restrictive interpretation of the constitutional provision under review which is being espoused by petitioners. They should be afforded due notice and opportunity to be heard, lest they be deprived of their property without due process.

Not only are public utility corporations other than PLDT directly and materially affected by the outcome of the petitions, their shareholders also stand to suffer in case they will be forced to divest their shareholdings to ensure compliance with the said restrictive interpretation of the term "capital". As explained by SHAREPHIL, in five corporations alone, more than Php158 Billion worth of shares must be divested by foreign shareholders and absorbed by Filipino investors if petitioners' position is upheld.

Petitioners' disregard of the rights of these other corporations and numerous shareholders constitutes another fatal procedural flaw, justifying the dismissal of their petitions. **Without giving all of them their day in court, they will definitely be deprived of their property without due process of law**.[6]

This is highlighted to clear any misimpression that the *Gamboa* Decision and *Gamboa* Resolution made a categorical ruling on the meaning of the word "capital" under Section 11, Article XII of the Constitution only in respect of, or only confined to, respondent Philippine Long Distance Telephone Company (PLDT). Nothing is further from the truth. Indeed, a fair reading of the *Gamboa* Decision and *Gamboa* Resolution shows that the Court's pronouncements therein would affect all public utilities, and not just respondent PLDT.

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[6] Decision, *id*. at 1165; citations omitted.

On the substantive grounds, the Court disposed of the issue on whether the SEC gravely abused its discretion in ruling that respondent PLDT is compliant with the limitation on foreign ownership under the Constitution and other relevant laws as without merit. The Court reasoned that "in the absence of a definitive ruling by the SEC on PLDT's compliance with the capital requirement pursuant to the *Gamboa* Decision and Resolution, any question relative to the inexistent ruling is premature."[7]

In resolving the other substantive issue raised by petitioners, the Court held that:

> [E]ven if the resolution of the procedural issues were conceded in favor of petitioners, the petitions, being anchored on Rule 65, must nonetheless fail because the SEC did **not** commit grave abuse of discretion amounting to lack or excess of jurisdiction when it issued SEC-MC No. 8. **To the contrary**, the Court finds SEC-MC No. 8 to have been issued in fealty to the *Gamboa* Decision and Resolution.[8]

To belabor the point, movant's petition is not a continuation of the *Gamboa* case as the *Gamboa* Decision attained finality on October 18, 2012, and thereafter Entry of Judgment was issued on December 11, 2012.[9]

As regards movant's repeated invocation of the transcendental importance of the *Gamboa* case, this does not *ipso facto* accord *locus standi* to movant. Being a new petition, movant had the burden to justify his *locus standi* in his own petition. The Court, however, was not persuaded by his justification.

Pursuant to the Court's constitutional duty to exercise judicial review, the Court has conclusively found no grave abuse of discretion on the part of SEC in issuing SEC-MC No. 8.

The Decision has painstakingly explained why it considered as *obiter dictum* that pronouncement in the *Gamboa* Resolution that the constitutional requirement on Filipino ownership should

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[7] Decision, *id*. at 1159.

[8] Decision, *id*. at 1166.

[9] *Id*. at 605-609.

"apply uniformly and across the board to all classes of shares, regardless of nomenclature and category, comprising the capital of a corporation."[9-a] The Court stated that:

> [T]he *fallo* or decretal/dispositive portions of both the *Gamboa* Decision and Resolution are definite, clear and unequivocal. While there is a passage in the body of the *Gamboa* Resolution that might have appeared contrary to the *fallo* of the *Gamboa* Decision x x x the definiteness and clarity of the *fallo* of the *Gamboa* Decision must control over the *obiter dictum* in the *Gamboa* Resolution regarding the application of the 60-40 Filipino-foreign ownership requirement to "each class of shares, regardless of differences in voting rights, privileges and restrictions."[10]

To the Court's mind and, as exhaustively demonstrated in the Decision, the dispositive portion of the *Gamboa* Decision was in no way modified by the *Gamboa* Resolution.

The heart of the controversy is the interpretation of Section 11, Article XII of the Constitution, which provides: "No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens x x x."

The *Gamboa* Decision already held, in no uncertain terms, that what the Constitution requires is "[f]ull [and legal] beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights x x x must rest in the hands of Filipino nationals x x x."[11] **And, precisely that is what SEC-MC No. 8 provides**, *viz.*: "x x x For purposes of determining compliance [with the constitutional or statutory ownership], the required percentage of Filipino ownership shall be applied to BOTH (a) the total number of outstanding shares of stock entitled to vote in the election of directors; AND (b) the total

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[9-a] *Supra* note 4, at 339.

[10] *Id.* at 1185.

[11] *Supra* note 3, at 57.

number of outstanding shares of stock, whether or not entitled to vote x x x."[12]

In construing "full beneficial ownership," the Implementing Rules and Regulations of the Foreign Investments Act of 1991 (FIA-IRR) provides:

> For stocks to be deemed owned and held by Philippine citizens or Philippine nationals, mere legal title is not enough to meet the required Filipino equity. Full beneficial ownership of the stocks, coupled with appropriate voting rights is essential. Thus, stocks, the voting rights of which have been assigned or transferred to aliens cannot be considered held by Philippine citizens or Philippine nationals.[13]

In turn, "beneficial owner" or "beneficial ownership" is defined in the Implementing Rules and Regulations of the Securities Regulation Code (SRC-IRR) as:

> [A]ny person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power (which includes the power to vote or direct the voting of such security) and/or investment returns or power (which includes the power to dispose of, or direct the disposition of such security) x x x.[14]

Thus, the definition of "beneficial owner or beneficial ownership" in the SRC-IRR, which is in consonance with the concept of "full beneficial ownership" in the FIA-IRR, is, as stressed in the Decision, relevant in resolving only the question of who is the beneficial owner or has beneficial ownership of each "specific stock" of the public utility company whose stocks are under review. **If** the Filipino has the **voting power** of the "specific stock", *i.e.*, he can **vote** the stock or direct another to vote for him, or the Filipino has the **investment power** over

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[12] SEC-MC No. 8, Sec. 2.

[13] Implementing Rules and Regulations of Republic Act No. 7042 (Foreign Investment Act of 1991) as amended by Republic Act No. 8179, Sec. 1, b.

[14] 2015 Implementing Rules and Regulations of the Securities Regulation Code, Sec. 3.1.2.

the "specific stock", *i.e.*, he can **dispose** of the stock or direct another to dispose of it for him, or both, *i.e.*, he can **vote and dispose** of that "specific stock" or direct another to vote or dispose it for him, **then** such Filipino is the "beneficial owner" of that "specific stock." Being considered Filipino, that "specific stock" is then to be counted as part of the 60% Filipino ownership requirement under the Constitution. The right to the dividends, *jus fruendi* – a right emanating from ownership of that "specific stock" necessarily accrues to its Filipino "beneficial owner."

Once more, this is emphasized anew to disabuse any notion that the dividends accruing to any particular stock are determinative of that stock's "beneficial ownership." Dividend declaration is dictated by the corporation's unrestricted retained earnings. On the other hand, the corporation's need of capital for expansion programs and special reserve for probable contingencies may limit retained earnings available for dividend declaration.[15] It bears repeating here that the Court in the *Gamboa* Decision adopted the foregoing definition of the term "capital" in Section 11, Article XII of the 1987 Constitution in express recognition of the sensitive and vital position of public utilities both in the national economy and for national security, so that the evident purpose of the citizenship requirement is to prevent aliens from assuming control of public utilities, which may be inimical to the national interest.[16] This purpose prescinds from the "benefits"/dividends that are derived from or accorded to the particular stocks held by Filipinos vis-à-vis the stocks held by aliens. So long as Filipinos have controlling interest of a public utility corporation, their decision to declare more dividends for a particular stock over other kinds of stock is their sole prerogative — an act of ownership that would presumably be for the benefit of the public utility corporation itself. Thus, as explained in the Decision:

In this regard, it would be *apropos* to state that since Filipinos own at least 60% of the outstanding shares of stock entitled to vote

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[15] SEC Memorandum Circular No. 11, Series of 2008.

[16] *Supra* note 3, at 44.

directors, which is what the Constitution precisely requires, then the Filipino stockholders **control** the corporation, *i.e.*, they dictate corporate actions and decisions, and they have all the rights of ownership including, but not limited to, offering certain preferred shares that may have greater economic interest to foreign investors – as the need for capital for corporate pursuits (such as expansion), may be good for the corporation that they own. Surely, these "true owners" will not allow any dilution of their ownership and control if such move will not be beneficial to them.[17]

Finally, as to how the SEC will classify or treat certain stocks with voting rights held by a trust fund that is created by the public entity whose compliance with the limitation on foreign ownership under the Constitution is under scrutiny, and how the SEC will determine if such public utility does, in fact, control how the said stocks will be voted, and whether, resultantly, the trust fund would be considered as Philippine national or not — lengthily discussed in the dissenting opinion of Justice Carpio — is speculative at this juncture. The Court cannot engage in guesswork. Thus, there is need of an actual case or controversy before the Court may exercise its power of judicial review. The movant's petition is **not** that actual case or controversy.

Thus, the discussion of Justice Carpio's dissenting opinion as to the voting preferred shares created by respondent PLDT, their acquisition by BTF Holdings, Inc., which appears to be a wholly-owned company of the PLDT Beneficial Trust Fund (BTF), and whether or not it is respondent PLDT's management that controls BTF and BTF Holdings, Inc. — all these are factual matters that are outside the ambit of this Court's review which, as stated in the beginning, is confined to determining whether or not the SEC committed grave abuse of discretion in issuing SEC-MC No. 8; that is, whether or not SEC-MC No. 8 violated the ruling of the Court in *Gamboa v. Finance Secretary Teves*,[18] and the resolution

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[17] Decision, *rollo* (Vol. II), p. 1168.

[18] *Supra* note 3.

in *Heirs of Wilson P. Gamboa v. Finance Sec. Teves*[19] denying the Motion for Reconsideration therein as to the proper understanding of "capital".

To be sure, it would be more prudent and advisable for the Court to await the SEC's prior determination of the citizenship of specific shares of stock held in trust — ***based on proven facts*** — before the Court proceeds to pass upon the legality of such determination.

As to whether respondent PLDT is currently in compliance with the Constitutional provision regarding public utility entities, the Court must likewise await the SEC's determination thereof applying SEC-MC No. 8. After all, as stated in the Decision, it is the SEC which is the government agency with the competent expertise and the mandate of law to make such determination.

In conclusion, the basic issues raised in the Motion having been duly considered and passed upon by the Court in the Decision and no substantial argument having been adduced to warrant the reconsideration sought, the Court resolves to **DENY** the Motion with **FINALITY**.

WHEREFORE, the subject Motion for Reconsideration is hereby **DENIED WITH FINALITY**. No further pleadings or motions shall be entertained in this case. Let entry of final judgment be issued immediately.

SO ORDERED.

Sereno, C.J., Peralta, Bersamin, del Castillo, Reyes, and *Tijam, JJ.,* concur.

Velasco, Jr., J., see concurring opinion.

Carpio and *Leonen, JJ.,* see dissenting opinions.

Leonardo-de Castro, Mendoza, and *Martires, JJ.,* join the dissent of *J.* Carpio.

Perlas-Bernabe and *Jardeleza, JJ.,* no part.

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[19] *Supra* note 4.

CONCURRING OPINION

VELASCO, JR., *J.*:

I concur with the denial of the motion for reconsideration, which still fails to demonstrate any grave abuse of discretion committed by respondent Securities and Exchange Commission (SEC) when it issued Memorandum Circular (MC) No. 8.

For purposes of emphasis, I restate part of my *Concurring Opinion* to the main Decision:

> The petition is anchored on the contention that the SEC committed grave abuse of discretion in issuing MC No. 8. By grave abuse of discretion, the petitioners must prove that the Commission's act was tainted with the quality of whim and caprice.[1] Abuse of discretion is not enough. It must be shown that the Commission exercised its power in an arbitrary or despotic manner because of passion or personal hostility that is so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined or to act at all in contemplation of law.[2]
>
> With this standard in mind, the petitioner and petitioners-in-intervention failed to demonstrate that the SEC's issuance of MC No. 8 was attended with grave abuse of discretion. On the contrary, the assailed circular sufficiently applied the Court's definitive ruling in *Gamboa*.
>
> To recall, *Gamboa* construed the word "capital" and the nationality requirement in Section 11, Article XII of the Constitution, which states:
>
> SECTION 11. **No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to**

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[1] *OKS Designtech, Inc. v. Caccam*, G.R. No. 211263, August 5, 2015.

[2] *Gold City Integrated Services, Inc. v. Intermediate Appellate Court*, G.R. Nos. 71771-73, March 31, 1989; citing *Arguelles v. Young*, No. 59880, September 11, 1987, 153 SCRA 690; *Republic v. Heirs of Spouses Molinyawe*, G.R. No. 217120, April 18, 2016; *Olaño v. Lim Eng Co*, G.R. No. 195835, March 14, 2016; *City of Iloilo v. Honrado*, G.R. No. 160399, December 9, 2015; *OKS Designtech, Inc. v. Caccam*, G.R. No. 211263, August 5, 2015.

> **corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens**, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. **The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital**, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.[3]

The Court explained in the June 28, 2011 Decision in *Gamboa* that **the term "capital" in Section 11, Article XII refers "only to shares of stock entitled to vote in the election of directors."** The rationale provided by the majority was that this interpretation ensures that **control** of the Board of Directors stays in the hands of Filipinos, since foreigners can only own a maximum of 40% of said shares and, accordingly, can only elect the equivalent percentage of directors. As a necessary corollary, Filipino stockholders can always elect 60% of the Board of Directors which, to the majority of the Court, translates to control over the corporation. The June 28, 2011 Decision, thus, read:

> Considering that common shares have voting rights which translate to control, as opposed to preferred shares which usually have no voting rights, the term 'capital' in Section 11, Article XII of the Constitution refers only to common shares. However, if the preferred shares also have the right to vote in the election of directors, then the term "capital" shall include such preferred shares because **the right to participate in the control or management of the corporation is exercised through the right to vote in the election of directors. In short, the term "capital" in Section 11, Article XII of the Constitution refers only to shares of stock that can vote in the election of directors.**

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[3] Emphasis supplied.

> This interpretation is consistent with the intent of the framers of the Constitution to place in the hands of Filipino citizens the control and management of public utilities. As revealed in the deliberations of the Constitutional Commission, "capital" refers to the voting stock or **controlling interest** of a corporation
> xxx

The dispositive portion of the June 28, 2011 Decision in *Gamboa* clearly spelled out the doctrinal declaration of the Court on the meaning of "capital" in Section 11, Article XII of the Constitution, *viz.*:

> WHEREFORE, we PARTLY GRANT the petition and rule that the term **"capital"** in Section 11, Article XII of the 1987 Constitution **refers only to shares of stock entitled to vote in the election of directors**, and thus in the present case only to common shares, and not to the total outstanding capital stock (common and non-voting preferred shares). Respondent Chairperson of the Securities and Exchange Commission is DIRECTED to apply this definition of the term "capital" in determining the extent of allowable foreign ownership in respondent Philippine Long Distance Telephone Company, and if there is a violation of Section 11, Article XII of the Constitution, to impose the appropriate sanctions under the law.[4]

The motions for reconsideration of the June 28, 2011 Decision filed by the movants in *Gamboa* argued against the application of the term "capital" to the voting shares alone and in favor of applying the term to the total outstanding capital stock (combined total of voting and non-voting shares). Notably, none of them contended or moved for the application of the capital or the 60-40 requirement to "each and every class of shares" of a public utility, as it was **never an issue in the case**.

In resolving the motions for reconsideration in *Gamboa*, it is relevant to stress that the majority **did not modify** the June 28, 2011 Decision. The *fallo* of the October 9, 2012 Resolution simply stated—

> WHEREFORE, we DENY the motions for reconsideration WITH FINALITY. No further pleadings shall be entertained.

Clearly, the Court had no intention, express or otherwise, to amend the construction of the term "capital" in the June 28, 2011 Decision

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[4] Emphasis supplied.

in *Gamboa*, much less in the manner proposed by petitioner Roy. Hence, no grave abuse of discretion can be attributed to the SEC in applying the term "capital" to the "voting shares" of a corporation.

The portion quoted by the petitioners is nothing more than an obiter dictum that has never been discussed as an issue during the deliberations in Gamboa. As such, it is not a binding pronouncement of the Court[5] that can be used as basis to declare the SEC's circular as unconstitutional.

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Thus, the zealous watchfulness demonstrated by the SEC in imposing another tier of protection for Filipino stockholders cannot, therefore, be penalized on a misreading of the October 9, 2012 Resolution in Gamboa, which neither added nor subtracted anything from the June 28, 2011 Decision defining capital as "shares of stock entitled to vote in the election of directors."

It must also be stressed that the Decision in *Gamboa* was issued pursuant to this Court's symbolic function. It was meant as a definitive ruling for the education of the bench, bar, and the public in general on the meaning of the word "capital" in Section 11, Article XII of the Constitution, and not as a resolution exclusively applicable to a particular public utility. Accordingly, instead of resolving the charges against PLDT, the Court directed the SEC to "apply this definition of the term 'capital' in determining the extent of allowable foreign ownership in respondent [PLDT]."

Presently, the SEC clarified that it "has not yet issued a definitive ruling anent PLDT's compliance with the limitation on foreign ownership imposed under the Constitution and relevant laws." It is, therefore, premature and presumptuous for this Court to adjudge as erroneous a ruling that is still to be rendered by the SEC.

Least of all, not being a trier of facts nor specially equipped to investigate the intricacies of corporate structures and the identities of capital market participants, this Court cannot declare

[5] *Ocean East Agency, Corp. v. Lopez*, G.R. No. 194410, October 14, 2015.

a corporation as non-compliant with the nationality requirement by, without more, a mere cursory review of its General Information Sheets. With the drastic consequences of such a ruling, which includes the possible revocation of its franchise, all parties affected—the corporate public utility, its investors both in equity and debt, and all its other stakeholders— deserve more than a passing treatment by this Court. The SEC, the government agency specifically tasked to review corporate matters, is better-suited to fairly rule, after a full-blown investigation, on the compliance by corporate public utilities with the nationality requirement.

Furthermore, in *Gamboa*, this Court construed "capital" as equivalent to the "**shares of stock entitled to vote in the election of directors**" and so, sustaining the petitioner's contention that it is through voting that control over a corporation is exercised, it ruled that 60% of the **voting shares** or the "**shares of stock entitled to vote in the election of directors**" in corporate public utilities are reserved for Filipinos. Thus, the June 28, 2011 *Gamboa* Decision emphatically stated, *viz.*:

> Indisputably, **one of the rights of a stockholder is the right to participate in the control or management of the corporation. This is exercised through his vote in the election of directors because it is the board of directors that controls or manages the corporation. In the absence of provisions in the articles of incorporation denying voting rights to preferred shares, preferred shares have the same voting rights as common shares.** However, preferred shareholders are often excluded from any control, that is, deprived of the right to vote in the election of directors and on other matters, on the theory that the preferred shareholders are merely investors in the corporation for income in the same manner as bondholders. In fact, under the Corporation Code only preferred or redeemable shares can be deprived of the right to vote. Common shares cannot be deprived of the right to vote in any corporate meeting, and any provision in the articles of incorporation restricting the right of common shareholders to vote is invalid.
>
> Considering that common shares have voting rights which translate to control, as opposed to preferred shares which usually have no voting rights, the term capital in Section 11, Article XII of the

Constitution refers only to common shares. However**, if the preferred shares also have the right to vote in the election of directors, then the term capital shall include such preferred shares because the right to participate in the control or management of the corporation is exercised through the right to vote in the election of directors. In short, the term capital in Section 11, Article XII of the Constitution refers only to shares of stock that can vote in the election of directors.**

Thus, the Court cannot now feign that the construction in *Gamboa* of the term "capital" is confined and limited only to "common shares," to the exclusion of voting preferred shares. Adopting this regrettably myopic view will certainly revise and alter the final decision and resolution in *Gamboa*.

For the foregoing, I vote to deny with finality the present Motion for Reconsideration.

DISSENTING OPINION

CARPIO, *J.*:

I dissent.

Section 11, Article XII of the Constitution provides: "No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least **sixty per centum of whose *capital* is owned by such citizens**, x x x."

In the *Gamboa Decision*,[1] the threshold issue before the Court was "whether the term 'capital' in Section 11, Article XII of the Constitution refers to the total common shares only or to the total outstanding capital stock (combined total of common and non-voting preferred shares) of **PLDT**, a public utility."

In resolving this issue, the Court looked into PLDT's capital structure at the time and found the glaring anomaly in treating the total outstanding capital stock as a single class of shares.

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[1] *Gamboa v. Teves,* 668 Phil. 1 (2011).

The Court showed how control and beneficial ownership of PLDT rest solely with the common shares, thus:

> x x x (1) foreigners own 64.27% of the common shares of PLDT, which class of shares exercises the sole right to vote in the election of directors, and thus exercise control over PLDT; (2) Filipinos own only 35.73% of PLDT's common shares, constituting a minority of the voting stock, and thus do not exercise control over PLDT; (3) preferred shares, 99.44% owned by Filipinos, have no voting rights; (4) preferred shares earn only 1/70 of the dividends that common shares earn; (5) preferred shares have twice the par value of common shares; and (6) preferred shares constitute 77.85% of the authorized capital stock of PLDT and common shares only 22.15%. This kind of ownership and control of a public utility is a mockery of the Constitution.
>
> Incidentally, the fact that PLDT common shares with a par value of ₱5.00 have a current stock market value of ₱2,328.00 per share, while PLDT preferred shares with a par value of ₱10.00 per share have a current stock market value ranging from only ₱10.92 to ₱11.06 per share, is a glaring confirmation by the market that control and beneficial ownership of PLDT rest with the common shares, not with the preferred shares.[2]

Clearly, PLDT's capital structure then, where 64.27% of the common shares were in the hands of foreigners, warranted the Court's ruling that the term "capital" refers to shares of stock that can vote in the election of directors. The Court further stated that "in the present case (in the case of PLDT), [the term 'capital' refers] only to common shares, and not to the total outstanding capital stock." The dispositive portion of the *Gamboa Decision* reads:

> WHEREFORE, we PARTLY GRANT the petition and rule that the term "capital" in Section 11, Article XII of the 1987 Constitution refers only to shares of stock entitled to vote in the election of directors, and thus in the present case only to common shares, and not to the total outstanding capital stock (common and non-voting preferred shares). Respondent Chairperson of the Securities and Exchange Commission is DIRECTED to apply this definition of the term "capital"

[2] *Id.* at 63-64.

in determining the extent of allowable foreign ownership in respondent Philippine Long Distance Telephone Company, and if there is a violation of Section 11, Article XII of the Constitution, to impose the appropriate sanctions under the law.

SO ORDERED.[3]

Moreover, in the *Gamboa Decision,* the Court stated that "[m]ere legal title is insufficient to meet the 60 percent Filipino-owned 'capital' required in the Constitution."[4] Full beneficial ownership of 60 percent of the total outstanding capital stock, coupled with 60 percent of the voting rights, is the minimum constitutional requirement for a corporation to operate a public utility, thus:

> x x x. Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is required. **The legal and beneficial ownership of 60 percent of the outstanding capital stock must rest in the hands of Filipino nationals in accordance with the constitutional mandate**. Otherwise, the corporation is "considered as non-Philippine national[s]."[5] (Emphasis supplied)

Significantly, in the 9 October 2012 *Gamboa Resolution*[6] denying the motion for reconsideration, the Court reiterated the requirement of full beneficial ownership by Filipinos of at least 60 percent of the outstanding capital stock and at least 60 percent Filipino ownership of the voting rights. This is consistent with the Foreign Investments Act, as well as its Implementing Rules, thus:

> This is consistent with Section 3 of the FIA which provides that where 100% of the capital stock is held by "a trustee of funds for pension or other employee retirement or separation benefits," the trustee is a Philippine national if "at least sixty percent (60%) of the fund will accrue to the

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[3] *Id*. at 69-70.

[4] *Id*. at 57.

[5] *Id*.

[6] 696 Phil. 276 (2012).

benefit of Philippine nationals." Likewise, Section 1(b) of the Implementing Rules of the FIA provides that "for stocks to be deemed owned and held by Philippine citizens or Philippine nationals, mere legal title is not enough to meet the required Filipino equity. **Full beneficial ownership of the stocks, coupled with appropriate voting rights, is essential."**[7] (Emphasis in the original)

The Court clarified, in no uncertain terms, that the 60 percent constitutional requirement of Filipino ownership applies uniformly and across the board to all classes of shares comprising the capital of a corporation. The 60 percent Filipino ownership requirement applies to each class of share, not to the total outstanding capital stock as a single class of share.

Since the constitutional requirement of at least 60 percent Filipino ownership applies not only to voting control of the corporation but also to the beneficial ownership of the corporation, it is therefore imperative that such requirement apply uniformly and across the board to all classes of shares, regardless of nomenclature and category, comprising the capital of a corporation. Under the Corporation Code, capital stock consists of all classes of shares issued to stockholders, that is, common shares as well as preferred shares, which may have different rights, privileges or restrictions as stated in the articles of incorporation.

x x x x x x x x x

x x x. Thus, if a corporation, engaged in a partially nationalized industry, issues a mixture of common and preferred non-voting shares, at least 60 percent of the common shares and at least 60 percent of the preferred non-voting shares must be owned by Filipinos. Of course, if a corporation issues only a single class of shares, at least 60 percent of such shares must necessarily be owned by Filipinos. **In short, the 60-40 ownership requirement in favor of Filipino citizens must apply separately to each class of shares, whether common, preferred non-voting, preferred voting or any other class of shares.** This uniform application of the 60-40 ownership requirement in favor of Filipino citizens clearly breathes life to the constitutional command that the ownership and operation of public utilities shall be reserved exclusively to corporations at least 60 percent of whose capital is

[7] *Id*. at 338-339.

Filipino-owned. Applying uniformly the 60-40 ownership requirement in favor of Filipino citizens to each class of shares, regardless of differences in voting rights, privileges and restrictions, guarantees effective Filipino control of public utilities, as mandated by the Constitution.

Moreover, such uniform application to each class of shares insures that the "controlling interest" in public utilities always lies in the hands of Filipino citizens. x x x.

As we held in our 28 June 2011 Decision, to construe broadly the term "capital" as the total outstanding capital stock, treated as a single class regardless of the actual classification of shares, grossly contravenes the intent and letter of the Constitution that the "State shall develop a self-reliant and independent national economy effectively controlled by Filipinos." We illustrated the glaring anomaly which would result in defining the term "capital" as the total outstanding capital stock of a corporation, treated as a single class of shares regardless of the actual classification of shares, to wit:

> Let us assume that a corporation has 100 common shares owned by foreigners and 1,000,000 non-voting preferred shares owned by Filipinos, with both classes of share having a par value of one peso (₱1.00) per share. Under the broad definition of the term "capital," such corporation would be considered compliant with the 40 percent constitutional limit on foreign equity of public utilities since the overwhelming majority, or more than 99.999 percent, of the total outstanding capital stock is Filipino owned. This is obviously absurd.
>
> In the example given, only the foreigners holding the common shares have voting rights in the election of directors, even if they hold only 100 shares. The foreigners, with a minuscule equity of less than 0.001 percent, exercise control over the public utility. On the other hand, the Filipinos, holding more than 99.999 percent of the equity, cannot vote in the election of directors and hence, have no control over the public utility. This starkly circumvents the intent of the framers of the Constitution, as well as the clear language of the Constitution, to place the control of public utilities in the hands of Filipinos. x x x.[8] (Emphasis supplied)

[8] *Id*. at 339, 341, 345.

Clearly, in both *Gamboa Decision* and *Resolution*, the Court categorically declared that the 60 percent minimum Filipino ownership refers not only to voting rights but likewise to full beneficial ownership of the stocks. Moreover, in the *Gamboa Resolution*, the Court explicitly stated that the 60 percent Filipino ownership applies uniformly to each class of shares. Such interpretation ensures effective control by Filipinos of public utilities, as expressly mandated by the Constitution.

Capital Structure of PLDT

Let us examine PLDT's capital structure to determine whether it complies with the *Gamboa Decision* and *Resolution* where the Court expressly held that the 60 percent minimum Filipino ownership refers not only to voting rights but also to full beneficial ownership of the stocks. Further, the 60 percent Filipino ownership applies uniformly to each class of shares.

In the 2011 General Information Sheet of PLDT, before the finality of the *Gamboa Decision* and *Resolution*, its shares were divided into common and preferred. **Filipinos owned 35.77% while foreigners owned 64.23% of the common shares.** Filipinos owned 99.67% while foreigners owned 0.33% of the preferred shares. Filipinos owned 86.30% while foreigners owned 13.70% of the total outstanding capital stock. There was no dispute that in 2011, before the *Gamboa Decision* and *Resolution* were promulgated, the common shares of PLDT had the right to vote in the election of the board of directors, whereas the preferred shares had no such right.

In the 2012 General Information Sheet of PLDT, after the promulgation of the *Gamboa Decision* and *Resolution*, the preferred shares were sub-classified into (a) voting preferred shares and (b) non-voting serial preferred shares. The newly-created voting preferred shares, which have voting rights in the election of directors, are fully owned by BTF Holdings, Inc. These voting preferred shares are not listed in the

Philippine Stock Exchange. With the newly-created preferred shares, it appears that Filipinos owned 65.53% while foreigners owned 34.47% of the total voting shares. However, based on common shares only, Filipinos owned 41.60% while foreigners owned 58.40%. Based on PLDT's 2012 General Information Sheet, Filipinos owned 100% of the non-voting preferred shares.

In the 2013 General Information Sheet of PLDT, it appears that Filipinos owned 67.32% while foreigners owned 32.68% of the total voting shares. However, based on common shares only, Filipinos owned 44.63% while 55.37% were owned by foreigners. Based on PLDT's 2013 General Information Sheet, Filipinos owned 100% of the non-voting preferred shares.

In the 2014 General Information Sheet of PLDT, it appears that Filipinos owned 68.34% while foreigners owned 31.66% of the total voting shares. However, based on common shares only, Filipinos owned 46.35% while foreigners owned 53.65%. Based on PLDT's 2014 General Information Sheet, Filipinos owned 100% of the non-voting preferred shares.

In the 2015 General Information Sheet of PLDT, it appears that Filipinos owned 67.95% while foreigners owned 32.05% of the total voting shares. However, based on common shares only, Filipinos owned 45.70% while foreigners owned 54.30%. Based on PLDT's 2015 General Information Sheet, Filipinos owned 100% of the non-voting preferred shares.

In the 2016 General Information Sheet of PLDT, it appears that Filipinos owned 69.82% while foreigners owned 30.18% of the total voting shares. However, based on common shares only, Filipinos owned 48.87% while foreigners owned 51.13%. Based on PLDT's 2016 General Information Sheet, Filipinos owned 100% of the non-voting preferred shares.

To summarize, the table below shows that from 2011 to 2016, the majority of the common shares remained in the hands of foreigners and less than 60% of the common shares were owned by Filipinos.

Number of PLDTshares	2011 in %	2012 in %	2013 in %	2014 in %	2015 in %	2016 in %
COMMON						
A. Filipino	35.77	41.60	44.63	46.35	45.70	48.87
B. Foreigners	64.23	58.40	55.37	53.65	54.30	51.13
PREFERRED (NON-VOTING)						
A. Filipino	99.67	100	100	100	100	100
B. Foreigners	0.33	0	0	0	0	0
PREFERRED (VOTING)						
A. Filipino	–	100	100	100	100	100
B. Foreigners	–	0	0	0	0	0
TOTAL VOTING						
A. Filipino	35.77	65.53	67.32	68.34	67.95	69.82
B. Foreigners	64.23	34.47	32.68	31.66	32.05	30.18

To repeat, the issue in the *Gamboa Decision* was "whether the term 'capital' in Section 11, Article XII of the Constitution refers to the total **common shares only** or to the total outstanding capital stock (combined total of common and non-voting preferred shares) of PLDT, a public utility."

Considering PLDT's capital structure at the time, indicating that control and ownership rest with the common shares, the Court stated in the dispositive portion of the *Gamboa Decision* that "the term 'capital' in Section 11, Article XII of the 1987 Constitution refers only to shares of stock entitled to vote in the election of directors, and thus in the present case only to common shares, and not to the total outstanding capital stock (common and non-voting preferred shares)."

If we apply the term "capital" as referring only to common shares and not to the total outstanding capital stock of PLDT, as stated in the *Gamboa Decision*, then since 2011, before the promulgation of the *Gamboa Decision* and *Resolution*, until 2016, after the promulgation of the *Gamboa Decision* and *Resolution*, PLDT's capital structure has failed to comply with the constitutional requirement that at least 60 percent of its common shares, which control PLDT, are Filipino-owned.

Voting Preferred Shares

In October 2012, PLDT created a new class of shares – the voting preferred shares – to comply allegedly with the *Gamboa Decision.* All the 150,000,000 newly-issued voting preferred shares were acquired by BTF Holdings, Inc., a wholly-owned company of the PLDT Beneficial Trust Fund (BTF). The voting preferred shares have a par value of ₱1.00 per share, while the common shares have a par value of ₱5.00 per share.

The BTF was established by the Board of Directors of PLDT as a retirement plan for PLDT's employees. As stated in PLDT's By-Laws, among the express powers of the Board of Directors of PLDT is to establish pension or retirement plans for the employees, and to determine the persons to participate in such plans and the amount of their participation.[9] The Board of Directors appoints the BTF's Board of Trustees, which manages the BTF and consists of two members of PLDT's Board of Directors, a senior member of the executive staff of PLDT, and two persons who are neither executives nor employees of PLDT.[10] Since the PLDT Board of Directors appoints the Board of Trustees of the BTF, in effect, it is PLDT's management which controls the BTF.

In 2011, when the *Gamboa Decision* was promulgated, PLDT's Board of Directors was elected by foreigners comprising more than 60 percent of the common shares who had the right to elect the Board of Directors. After the creation of the voting preferred shares in 2012, PLDT's Board of Directors continued to be manned by the same set of persons, and the management of PLDT remained in the hands of the same persons.

The table[11] below shows that the total voting preferred shares of 150,000,000 comprised 40.98% of the total voting capital of

[9] Article V, Section 9(i) of the Amended By-Laws of PLDT dated 20 February 2015.

[10] Page F-119 of SEC Form 17-A (Annual Report) for the fiscal year 2015 <http://www.pds.com.ph/wp-content/uploads/2016/03/Disclosure-No.-490-2016-Annual-Report-for-Fiscal-Year-Ended-December-31-2015-SEC-FORM-17-A.pdf> (accessed on 12 March 2017).

[11] Based on PLDT's General Information Sheets from 2011 to 2016.

PLDT from 2012 until 2016. However, for the same period, the number of voting preferred shares comprised only 22.5% of the total paid-up capital of PLDT. The number of common shares, which was owned by a majority of foreigners, comprised 77.5% of the total paid-up capital of PLDT.

Number of PLDT Shares	2012 (as of 16 Oct. 2012)	2013 (as of 3 Oct. 2013)	2014 (as of 11 April 2014)	2015 (as of 10 April 2015)	2016 (as of 15 April 2016)
FILIPINO					
Common	89,882,436	96,429,568	100,150,726	98,743,500	105,577,491
Voting Preferred	150,000,000	150,000,000	150,000,000	150,000,000	150,000,000
FOREIGNERS					
Common	126,173,339	119,626,207	115,905,049	117,312,275	110,478,284
Voting Preferred	0	0	0	0	0
TOTAL VOTING	366,055,775	366,055,775	366,055,775	366,055,775	366,055,775
% OF VOTING PREFERRED VS. TOTAL VOTING (PAID-UP CAPITAL)	40.98%	40.98%	40.98%	40.98%	40.98%
% OF VOTING PREFERRED VS. TOTAL PAID-UP CAPITAL[12]	22.52%	22.52%	22.52%	22.73%	22.52%

2011: http://ww.pldt.com/docs/default-source/general-information/pldt-2011-gis.pdf?sfvrsn=0 (accessed on 7 March 2017).

2012: http://www.pldt.com/docs/default-source/general-information/amended-general-information-sheet_final-2012.pdf?sfvrsn=0 (accessed on 7 March 2017).

2013: http://www.pldt.com/docs/default-source/general-information/amended-gis_decrease-in-capital-stock_10-03-13.pdf?sfvrsn=0 (accessed on 7 March 2017)

2014: http://www.pldt.com/docs/default-source/general-information/2014-gis-with-certification.pdf?sfvrsn=0 (accessed on 7 March 2017)

2015: http://www.pldt.com/docs/default-source/general-information/2015-pldt-gis-with-certification.pdf?sfvrsn=2 (accessed on 7 March 2017).

2016: http://www.pldt.com/docs/default-source/general-information/pldt-2016-amended-general-information-sheet-(gis).pdf?sfvrsn=0 (accessed on 7 March 2017).

[12] The number of shares comprising the total paid-up capital for 2012 was 666,058,745; for 2013 it was 666,056,345; for 2014 it was 666,056,345; for 2015 it was 666,056,145; and for 2016 it was 666,057,015. Based on PLDT's General Information Sheets.

There is no question that the 150,000,000 voting preferred shares have the right to vote in the election of the Board of Directors. However, the Board of Trustees of the BTF is appointed by the Board of Directors of PLDT. The BTF controls how the voting preferred shares of BTF Holdings, Inc. are voted. In short, BTF Holdings, Inc. is controlled by the Board of Directors of PLDT, including how the voting preferred shares of BTF Holdings, Inc. will be voted. In essence, whoever controls PLDT also controls BTF and BTF Holdings, Inc. When the voting preferred shares were created and issued to BTF Holdings, Inc., PLDT, BTF, and BTF Holdings, Inc. were **all controlled by the same PLDT Board of Directors**, who was elected by the owners of the PLDT common shares. The majority of these PLDT common shares were then, and even up to now, foreign-owned and controlled.

In 2012, when the voting preferred shares were created and issued, the common shares with a par value of ₱5.00 were traded in the stock market for a price which reached ₱2,650.[13] Meanwhile, the voting preferred shares with a par value of ₱1.00 were not traded or listed in the stock exchange. While voting rights had been extended to the newly-created voting preferred shares, the beneficial ownership of PLDT remained indisputably with the common shares.

Clearly, the issuance of the voting preferred shares is a farce. PLDT created and issued the voting preferred shares to "comply" allegedly with the *Gamboa Decision* and *Gamboa Resolution.* With its "modified" capital structure, PLDT ostensibly qualifies as a "Philippine national" with at least 60 percent of its voting stock in the hands of Filipinos. However, in truth and in fact, it is nothing but a "sweetheart deal," a disingenuous device, which not only circumvents the ruling in *Gamboa;* but worse, illegally evades the constitutional mandate of 60-40 Filipino ownership of capital. This ploy is a plain and simple travesty of the Constitution.

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[13] On 23 October 2012. <http://edge.pse.com.ph/companyPage/stockData.do?cmpy_id=6> (accessed on 10 March 2017).

Beneficial Ownership

The table below shows the disparity in the amounts of dividends declared from 2013 to 2016[14] between PLDT's common shares and voting preferred shares.

PLDT Shares	2013	2014	2015	2016
COMMON[15] (per share)	₱52 ₱60 ₱63	₱54 ₱62 ₱69	₱26 ₱61 ₱65	₱57 ₱49
VOTING PREFERRED STOCK[16] (per share)	₱0.016/share (₱2,437,500/ 150,000,000)	₱0.016/share (₱2,437,500/ 150,000,000)	₱0.016/share (₱2,437,500/ 150,000,000)	₱0.016/share (₱2,437,500/ 150,000,000)
% DIVIDENDS OF VOTING PREFERRED VS. COMMON SHARES	0.04%	0.04%	0.03%	0.06%

Clearly, such disparity highlights the anomaly in the treatment of the total outstanding voting stock as a single class of shares. From 2013 to 2016, the declared dividends on the common shares ranged from ₱26 to ₱69 per share per annum with a par value of ₱5.00 per share, whereas the dividend on the 150,000,000 voting preferred shares amounted to ₱0.065[17] per annum with a par value of ₱1.00 per share.

In short, the voting preferred shares comprised 40.98% of all voting shares but received only 0.04%[18] of the dividends

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[14] Based on PLDT's dividend declaration from 2013 to 2016 <http://www.pldt.com/investor-relations/shareholder-information/dividend-info> (accessed on 12 March 2017).

[15] Declared on various dates.

[16] Quarterly.

[17] For 2013, 2014, and 2016.

[18] ₱0.065 (sum of the dividends of each voting preferred share) divided by ₱175.065 (sum of the dividends of each common share and voting preferred share).

for 2013, 0.04%[19] for 2014, 0.03%[20] for 2015, and 0.06%[21] for 2016, compared with the dividends received by the common shares for the same period.

Clearly, the voting preferred shares are mere "mickey mouse" voting shares, created just to ostensibly comply with the 60 percent Filipino ownership requirement of the voting stock. In reality, the voting preferred shares have insignificant beneficial returns to whoever owns it.

Significantly, in the *Gamboa Decision,* the Court cited the disparity in the beneficial ownership between common shares and preferred shares of PLDT, to wit:

> Incidentally, the fact that PLDT common shares with a par value of ₱5.00 have a current stock market value of ₱2,328.00 per share,-while PLDT preferred shares with a par value of ₱10.00 per share have a current stock market value ranging from only ₱10.92 to ₱11.06 per share, is a glaring confirmation by the market that control and beneficial ownership of PLDT rest with the common shares, not with the preferred shares.[22]

It must be noted that as of 10 March 2017, the last traded price of PLDT's common shares with a par value of ₱5.00 is ₱1,544.00,[23] whereas the voting preferred shares with a par value of ₱1.00 are not listed or traded. This further confirms that control and beneficial ownership of PLDT rest with the common shares, not with the preferred shares, either voting or non-voting.

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[19] ₱0.065 (sum of the dividends of each voting preferred share) divided by ₱185.065 (sum of the dividends of each common share and voting preferred share).

[20] ₱0.049 (sum of the dividends of each voting preferred share) divided by ₱152.049 (sum of the dividends of each common share and voting preferred share).

[21] ₱0.065 (sum of the dividends of each voting preferred share) divided by ₱106.065 (sum of the dividends of each common share and voting preferred share).

[22] *Gamboa v. Teves, supra* note 1, at 64.

[23] As of 1:27 p.m. of 10 March 2017 <http://edge.pse.com.ph/companyPage/stockData.do?cmpy_id=6>.

Moreover, as I have previously stated, SEC Memorandum Circular No. 8 can be considered valid only if (1) the stocks with voting rights and (2) the stocks without voting rights, which comprise the capital of a corporation operating a public utility, have **equal** par values. If the shares of stock have different par values, then applying SEC Memorandum Circular No. 8 would contravene the *Gamboa Decision* that the "**legal and beneficial ownership of 60 percent of the outstanding capital stock x x x rests in the hands of Filipino nationals in accordance with the constitutional mandate**." I illustrated the resulting anomaly in this wise:

> For example, assume that class "A" voting shares have a par value of ₱1.00, and class "B" non-voting preferred shares have a par value of ₱100.00. If 100 outstanding class "A" shares are all owned by Filipino citizens, and 80 outstanding class "B" shares are owned by foreigners and 20 class "B" shares are owned by Filipino citizens, the 60-40 percent ownership requirement in favor of Filipino citizens for voting shares, as well as for the total voting and non-voting shares, will be complied with. If dividends are declared equivalent to the par value per share for all classes of shares, only 20.8 percent of the dividends will go to Filipino citizens while 79.2 percent of the dividends will go to foreigners, an absurdity or anomaly that the framers of the Constitution certainly did not intend. Such absurdity or anomaly will also be contrary to the *Gamboa Decision* that the "**legal and beneficial ownership of 60 percent of the outstanding capital stock x x x rests in the hands of Filipino nationals in accordance with the constitutional mandate**." (Emphasis in the original)

PLDT's capital structure, as well as the disparity in the declared dividends between common and voting preferred shares, illustrates clearly the anomaly which will result in the interpretation by the SEC of the *Gamboa Decision* and *Resolution*. Applying the 60 percent Filipino ownership to the total voting stock and to the total outstanding stock, whether voting or non-voting, and not to each class of shares of PLDT clearly amounts to a blatant mockery of the Constitution.

Clarification of the Gamboa Decision and Resolution

While the Court did not explicitly state in the dispositive portion of the *Gamboa Decision* and *Resolution* that the minimum

60 percent Filipino ownership must be uniformly applied to each class of shares, the body of the *Gamboa Resolution* categorically declared that "the 60-40 ownership requirement in favor of Filipino citizens must apply separately to each class of shares, whether common, preferred non-voting, preferred voting or any other class of shares."

Is the Court perpetually precluded from refining the dispositive portion of the *Gamboa Decision* and *Resolution* to harmonize with the Court's pronouncements in the body of the decision? Is the Court absolutely barred from clarifying the dispositive portion of the *Gamboa Decision* and *Resolution* and stating that the 60-40 Filipino ownership applies to each class of shares, as declared in the body of the *Gamboa Resolution*?

Definitely, no.

To avoid absurdity, and more importantly, to uphold the spirit and language of the Constitution, the Court is not only allowed, but is bound, to clarify, even rectify, any apparent conflict in its decisions. To grasp and delve into the true intent and meaning of a decision, no specific portion thereof should be resorted to – the decision must be considered in its entirety.[24] In *Reinsurance Company of the Orient, Inc. v. Court of Appeals,*[25] the Court stated:

> It is true that even a judgment which has become final and executory may be clarified under certain circumstances. The dispositive portion of the judgment may, for instance, contain an error clearly clerical in nature (perhaps best illustrated by an error in arithmetical computation) or an ambiguity arising from inadvertent omission, which error may be rectified or ambiguity clarified and the omission supplied by reference primarily to the body of the decision itself. Supplementary reference to the pleadings previously filed in the case may also be resorted to by way of corroboration of the existence of the error or of the ambiguity in the dispositive part of the judgment. x x x.

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[24] *Gulang v. Court of Appeals,* 360 Phil. 435, 450 (1998), citing *Valderrama v. NLRC,* 326 Phil. 477, 484 (1996).

[25] 275 Phil. 20, 34 (1991). Cited in *Gulang v. Court of Appeals, id*.

To refuse to clarify the dispositive portion of the *Gamboa Decision*, invoking conclusiveness of judgment and *obiter dictum*, among other things, is to shirk from this Court's sworn duty to uphold the Constitution. Consequently, the Court must reject the SEC's flimsy argument that the SEC's task is merely to implement the Court's directive as contained in the dispositive portion of the *Gamboa Decision*. Following such contention, the SEC deliberately ignores the crucial pronouncements of the Court in the body of the *Gamboa Decision* and *Resolution*.

Possible Economic Consequences

Agreeing with the Philippine Stock Exchange, the majority voiced fears of an economic disaster if the term "capital" would be "re-interpreted." The PSE claims that "[a]dopting a new definition of 'capital' will prove disastrous [to] the Philippine stock market." The majority opined that "a restrictive interpretation – or rather, re-interpretation, of 'capital' x x x directly affects the well-being of the country."

Suffice it to state that the possible economic repercussions resulting from the definition of the term "capital" in Section 11, Article XII of the Constitution can never justify a blatant violation of the Constitution. It is utterly dangerous to hold that possible economic repercussions justify junking the Constitution. The solution is to properly amend the Constitution, not to start violating it every time it becomes inconvenient to comply with the Constitution.

To repeat, the Constitution expressly mandates an economy effectively controlled by Filipinos. To sustain the glaringly anomalous and absurd situation which will result from the SEC's interpretation of the term "capital" contravenes the *Gamboa Decision* and *Resolution,* and worse, contradicts the Constitution.

The majority's decision now allows foreigners to control all nationalized industries, whether nationalized under the Constitution or existing statutes. Under these existing laws, foreign ownership is limited to less than a controlling interest. With the majority's decision, the mere expedient of creating "mickey mouse" voting preferred shares will turn over

control of nationalized industries, particularly strategic industries like telecommunications and energy distribution, to foreigners. This is what the majority's decision is all about. This has, of course, far-reaching ramifications to the country's national economy, national security, and even the future of our country as a sovereign state.

ACCORDINGLY, I vote to **GRANT** the motion for reconsideration. The minimum 60 percent Filipino ownership requirement under Section 11, Article XII of the Constitution must be applied to each class of shares, which comprises "capital," as used in the Constitution, in determining whether a corporation can validly operate a public utility.

DISSENTING OPINION

LEONEN, *J.*:

I maintain my dissent.

The primordial interest served by the limitation of foreign participation and ownership in certain economic activities is the "conserv[ation] and develop[ment of] our *patrimony*."[1] By definition, this limitation is a matter of maintaining and rendering to the Filipino what belongs to the Filipino. This means that there is an effective control by Filipinos. It also means, as an act of preservation and development, that the Philippine economy stands to benefit from the fruits of capital. It is thus a question of national integrity:

> It should be emphatically stated that the provisions of our Constitution which limit to Filipinos the rights to develop the natural resources and to operate the public utilities of the Philippines is one of the bulwarks of our national integrity. The Filipino people decided to include it in our Constitution in order that it may have the stability and permanency that its importance requires. It is written in our Constitution so that it may neither be the subject of barter nor be impaired in the give and take of politics. *With our natural resources, our sources of power and energy, our public lands, and our public*

[1] CONST., Preamble.

utilities, the material basis of the nation's existence, in the hands of aliens over whom the Philippine Government does not have complete control, the Filipinos may soon find themselves deprived of their patrimony and living as it were, in a house that no longer belongs to them.[2] (Emphasis supplied)

The 1987 Constitution leaves room for the legislature to identify "certain areas of investment" where foreign equity participation may be limited to 40% or even lower.[3] This is in addition to the areas of natural resources[4] and public

[2] Former President of the University of the Philippines, Hon. Vicente G. Sinco (Congressional Record, House of Representatives, Vol. 1, No. 26, 561), quoted in *Republic v. Quasha*, 150-B Phil. 140, 170 (1972) [Per *J*. Reyes, J.B.L., *En Banc*].

[3] CONST., Art. XII, Sec. 10 provides:

Section 10. The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

The State shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities.

[4] CONST., Art. XII, Sec. 2, par. (1) provides:

Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

utilities[5] where foreign equity participation was already limited to a maximum of 40% by the 1935[6] and the 1973[7] Constitutions.

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[5] CONST., Art. XII, Sec. 11 provides:

Section 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

[6] CONST. (1935), Art. XII, Sec. 1 provides:

Section 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces or potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant.

CONST. (1935), Art. XIII, Sec. 8 provides:

Section 8. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines, sixty per centum of the capital of which is owned by citizens of the Philippines, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. No franchise or right shall be granted to any individual, firm, or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by the National Assembly when the public interest so requires.

[7] CONST. (1973), Art. XIV, Sec. 5 provides:

This is also in addition to other activities explicitly mentioned outside of Article XIV of the 1987 Constitution.[8]

Section 5. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of the capital of which is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal in by the National Assembly when the public interest so requires. The State shall encourage equity participation in public utilities by the general public.The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in the capital thereof.

Const. (1973), Art. XIV, Sec. 9 provides:

Section 9. The disposition, exploration, development, exploitation, or utilization of any of the natural resources of the Philippines shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens. The National Assembly, in the national interest, may allow such citizens, corporations, or associations to enter into service contracts for financial, technical, management, or other forms of assistance with any foreign person or entity for the exploration, development, exploitation, or utilization of any of the natural resources. Existing valid and binding service contracts for financial, technical, management, or other forms of assistance are hereby recognized as such.

[8] Const., Art. XIV, Sec. 4 (2) provides:

Section 4.

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(2) Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty per centum of the capital of which is owned by such citizens. The Congress may, however, require increased Filipino equity participation in all educational institutions.

Const., Art. XVI, Sec. 11 provides:

SECTION 11. (1) The ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens.

The Congress shall regulate or prohibit monopolies in commercial mass media when the public interest so requires. No combinations in restraint of trade or unfair competition therein shall be allowed.

(2) The advertising industry is impressed with public interest, and shall be regulated by law for the protection of consumers and the promotion of the general welfare.

The Constitution recognizes private enterprise and investments as indispensable to national progress and therefore encourages and provides incentives for them.[9] Yet the Constitution's propitious stance towards private enterprise and investment is tempered by the primacy of a "self-reliant and independent national economy."[10]

The imperative of conserving and developing our inheritance and integrity is not an empty exhortation. The specific mandate is established by Article II, Section 19 of the 1987 Constitution: "The State *shall* develop a self-reliant and independent national economy effectively controlled by Filipinos."

There is thus a positive duty imposed upon state organs. They are charged with the definite prestation of going about and ensuring such conservation and development. This is done through the *conscious* adoption of legal mechanisms that *adequately* effect such conservation and development.

The mechanisms we adopt in jurisprudence must work not only at a barefaced identification of Filipino and foreign stock ownership. They must go beyond surveying nominal compliance but discerningly – even astutely – account for and foreclose avenues for circumvention.

This begins with a conceptual understanding of capital and a functional comprehension of what it means to own

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Only Filipino citizens or corporations or associations at least seventy per centum of the capital of which is owned by such citizens shall be allowed to engage in the advertising industry. The participation of foreign investors in the governing body of entities in such industry shall be limited to their proportionate share in the capital thereof, and all the executive and managing officers of such entities must be citizens of the Philippines.

[9] Const., Art. II, Sec. 20 provides:

Section 20. The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides in centives to needed investments.

[10] Const., Art. II, Sec. 19:

Section 19. The State shall develop a self-reliant and independent national economy effectively controlled by Filipinos.

capital. These must be thorough, with keen awareness that formal designations are not always representative of attendant rights, benefits, prerogatives, and other incidents. More than titular descriptions therefore, the mechanisms we adopt must scrutinize the many features of stock ownership, such as, its ultimate end of deriving commercial gains, the mutable as against the inviolable rights it entails, and its implications for participating in corporate affairs, the avenues for withholding participation, as well as the extent and quality of such participation depending on the nature of the affair. Our jurisprudential mechanisms must focus on beneficial, not merely titular, ownership. It cannot be true that a share of stock is held by a Filipino when it is only the title that he holds while the entire usufruct belongs to a foreigner.

Accordingly, the apparatus for reckoning foreign ownership must be willing go beyond what (i.e., the class of shares) corporate participants are holding but also at how they are holding it. When appropriate, there must be an unravelling of who ultimately derives the gains, as well as who benefits from and influences the manner of exercising the rights and prerogatives attendant to holding shares. Our mechanisms must rise beyond the naivety of assuming that nominal ownership translates to consummate and beneficial ownership.

The majority's position limiting the conception of "capital" vis-à-vis foreign equity participation in public utilities under Article XII, Section 11 of the 1987 Constitution only to shares of stock entitled to vote for directors in a corporation fails to adequately effect the Constitution's dictum. Rather than guarding our patrimony, it has opened the door for foreign control of corporations engaged in nationalized economic activities.[11]

In keeping with the primacy of our patrimony and the charge of a "self-reliant and independent national economy," capital

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[11] RIGOBERTO D. TIGLAO, *COLLOSAL DECEPTION: HOW FOREIGNERS CONTROL OUR TELECOMS SECTOR* (2016).

must be construed in such a manner as to secure "the controlling interest in favor of Filipinos."[12]

To limit capital to so-called voting shares is to be shortsighted. It fails to account for the reality that every class of shares exercises a measure of control over a corporation. Even so-called non-voting shares vote and may be pivotal in the most crucial corporate actions. A cursory reading of the Corporation Code reveals this:

> No class of shares is ever truly bereft of a measure of control of a corporation. It is true, as Section 6 of the Corporation Code permits, that preferred and/or redeemable shares may be denied the right to vote extended to other classes of shares. For this reason, they are also often referred to as ["]non-voting shares.["] However, the absolutist connotation of the description "non-voting" is misleading. The same Section 6 provides that these "non-voting shares" are still "entitled to vote on the following matters:
>
> 1. Amendment of the articles of incorporation;
> 2. Adoption and amendment of by-laws;
> 3. Sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the corporate property;
> 4. Incurring, creating or increasing bonded indebtedness;
> 5. Increase or decrease of capital stock;
> 6. Merger or consolidation of the corporation with another corporation or other corporations;
> 7. Investment of corporate funds in another corporation or business in accordance with this Code; and
> 8. Dissolution of the corporation.

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[12] Dissenting Opinion of *J.* Leonen in *Roy v. Herbosa*, G.R. No. 207246, November 22, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/207246_leonen.pdf> 6 [Per *J.* Caguioa, *En Banc*], citing Dissenting Opinion of *J.* Mendoza in *Roy v. Herbosa*, G.R. No. 207246, November 22, 2016< http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/207246_mendoza.pdf> 21 [Per *J.* Caguioa, *En Banc*].

In the most crucial corporate actions – those that go into the very constitution of the corporation – even so-called non-voting shares may vote. Not only can they vote; they can be pivotal in deciding the most basic issues confronting a corporation. Certainly, the ability to decide a corporation's framework of governance (i.e., its articles of incorporation and by-laws), viability (through the encumbrance or disposition of all or substantially all of its assets, engagement in another enterprise, or subjection to indebtedness), or even its very existence (through its merger or consolidation with another corporate entity, or even through its outright dissolution) demonstrates not only a measure of control, but even possibly *overruling* control. "Non-voting" preferred and redeemable shares are hardly irrelevant in controlling a corporation.[13] (Emphasis in the original, citation omitted)

The constitutional imperative demands a consideration not just of nominal power and control or the identification of which shares are denominated as "voting" and "non-voting", but equally of beneficial ownership.

The implementing rules and regulations (amended 2004) of Republic Act No. 8799, the Securities Regulation Code (SRC), define "beneficial owner or beneficial ownership." It identifies the two (2) facets of beneficial ownership: first, having or sharing voting power; second, having or sharing investment returns or power:

Rule 3 – Definition of Terms Used in the Rules and Regulations

1. As used in the rules and regulations adopted by the Commission under the Code, unless the context otherwise requires:

A. *Beneficial owner* or beneficial ownership *means any person who, directly or indirectly*, through any contract, arrangement, understanding, relationship or otherwise, *has or shares voting power*, which includes the power to vote, or to direct the voting of such security; *and/or investment returns or power*, which includes the power to dispose of, or to direct the

[13] Dissenting Opinion of *J.* Leonen in *Roy v. Herbosa*, G.R. No. 207246, November 22, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/207246_leonen.pdf> 6–7 [Per *J.* Caguioa, *En Banc*].

disposition of such security; provided, however, that a person shall be deemed to have an indirect beneficial ownership interest in any security which is:

i. held by members of his immediate family sharing the same household;

ii. held by a partnership in which he is a general partner;

iii. held by a corporation of which he is a controlling shareholder; or

iv. subject to any contract, arrangement or understanding which gives him voting power or investment power with respect to such securities; provided however, that the following persons or institutions shall not be deemed to be beneficial owners of securities held by them for the benefit of third parties or in customer or fiduciary accounts in the ordinary course of business, so long as such shares were acquired by such persons or institutions without the purpose or effect of changing or influencing control of the issuer:

   a. a broker dealer;

   b. an investment house registered under the Investment Houses Law;

   c. a bank authorized to operate as such by the Bangko Sentral ng Pilipinas;

   d. an insurance company subject to the supervision of the Office of the Insurance Commission;

   e. an investment company registered under the Investment Company Act;

   f. a pension plan subject to regulation and supervision by the Bureau of Internal Revenue and/or the Office of the Insurance Commission or relevant authority; and

   g. a group in which all of the members are persons specified above.

All securities of the same class beneficially owned by a person, regardless of the form such beneficial ownership takes, shall be aggregated in calculating the number of shares beneficially owned by such person.

A person shall be deemed to be the beneficial owner of a security if that person has the right to acquire beneficial ownership, within thirty (30) days, including, but not limited to, any right to acquire, through the exercise of any option, warrant or right; through the conversion of any security; pursuant to the power to revoke a trust, discretionary account or similar arrangement; or pursuant to automatic termination of a trust, discretionary account or similar arrangement. (Emphasis supplied)

The concept of beneficial ownership uncovers that control is not entirely the end of participating in a stock corporation. As stock corporations are fundamentally business organizations, participating in their affairs by partaking in ownership is ultimately a matter of reaping gains from investments.

Consistent with the composite character of stock ownership and impelled by the need to equip state organs with the most efficacious means for conserving our heritage are the correlative mechanisms of the Control Test and the Grandfather Rule. These are the guideposts through which foreign participation in nationalized economic activities is reckoned. Together, the Control Test and the Grandfather Rule enable an adequate mechanism for state organs to examine whether a stock corporation is *effectively* controlled and *beneficially* owned by Filipinos.

My dissent to the majority's November 22, 2016 Decision,[14] as well as to the April 21, 2014 Decision[15] and January 28, 2015 Resolution[16] in *Narra Nickel and Development Corp. v. Redmont*

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[14] Dissenting Opinion of *J*. Leonen in *Roy v. Herbosa,* G.R. No. 207246, November 22, 2016,http:sc,jurisdiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/207246_leonen.pdf> [Per *J*. Caguioa, *En Banc*]

[15] Dissenting Opinion of *J*. Leonen in *Narra Nickel Mining & Development Corp. v. Redmont Consolidated Mines Corp*., 733 Phil. 365, 420–490 (2014) [Per *J*. Velasco, Third Division].

[16] Dissenting Opinion of *J*. Leonen in *Narra Nickel Mining and Development Corp. v. Redmont Consolidated Mines Corp*., G.R. No. 195580, January 28, 2015, 748 SCRA 455, 492-510 [Per *J*. Velasco, Special Third Division Resolution].

Consolidated Mines Corp., emphasized that the Control Test finds initial application and "must govern in reckoning foreign equity ownership in corporations engaged in nationalized economic activities."[17] Further, "the Grandfather Rule may be used as a supplement to the Control Test, that is, as a further check to ensure that control and beneficial ownership of a corporation is in fact lodged in Filipinos."[18]

The correlation between the Control Test and the Grandfather Rule – where the former finds initial application, and the latter supplements – is settled in jurisprudence, having been affirmed in the January 28, 2015 Resolution in *Narra Nickel*. The Court explained:

> [T]he Control Test can be, as it has been, applied jointly with the Grandfather Rule to determine the observance of foreign ownership restriction in nationalized economic activities. The Control Test and the Grandfather Rule are not, as it were, incompatible ownership-determinant methods that can only be applied alternative to each other. Rather, *these methods can, if appropriate, be used cumulatively in the determination of the ownership and control of corporations engaged in fully or partly nationalized activities*, as the mining operation involved in this case or the operation of public utilities as in Gamboa or Bayantel.
>
> The Grandfather Rule, standing alone, should not be used to determine the Filipino ownership and control in a corporation, as it could result in an otherwise foreign corporation rendered qualified to perform nationalized or partly nationalized activities. Hence, it is only when the Control Test is first complied with that the Grandfather Rule may be applied. Put in another manner, if the subject corporation's Filipino equity falls below the threshold 60%, the corporation is immediately considered foreign-owned, in which case, the need to resort to the Grandfather Rule disappears.

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[17] Dissenting Opinion of *J.* Leonen in *Narra Nickel Mining & Development Corp. v. Redmont Consolidated Mines Corp.*, 733 Phil. 365, 468 (2014) [Per *J.* Velasco, Third Division].

[18] *Id.* at 478.

On the other hand, a corporation that complies with the 60-40 Filipino to foreign equity requirement can be considered a Filipino corporation if there is no doubt as to who has the "beneficial ownership" and "control" of the corporation. In that instance, there is no need for a dissection or further inquiry on the ownership of the corporate shareholders in both the investing and investee corporation or the application of the Grandfather Rule. As a corollary rule, even if the 60-40 Filipino to foreign equity ratio is apparently met by the subject or investee corporation, a resort to the Grandfather Rule is necessary if doubt exists as to the locus of the "beneficial ownership" and "control."[19] (Emphasis supplied)

Characterizing the Grandfather Rule as a "supplement" or as a "*further* check" is not understating its importance.

Precisely, the Grandfather Rule is intended to frustrate the use of ostensible equity ownership as an artifice for circumventing the constitutional imperatives of "conserv[ing] and develop[ing] our patrimony"[20] and "develop[ing] a self-reliant and independent national economy."[21]

We should be mindful of schemes used to frustrate the Constitution's ends. These include the use of dummies and corporate layering and cloaking devices. As early as 1936, we have adopted the Anti-Dummy Law.[22] It not only proscribes, but even penalizes concession to use one's name or citizenship to evade constitutional or legal requirements of citizenship for the exercise of a right, franchise or privilege,[23] the simulation of minimum capital stock,[24]

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[19] *Narra Nickel Mining and Development Corp. v. Redmont Consolidated Mines Corp.*, G.R. No. 195580, January 28, 2015, 748 SCRA 455, 477-478 [Per *J.* Velasco, Special Third Division Resolution].

[20] CONST., preamble.

[21] CONST., Art. II, Sec. 19.

[22] Com. Act No. 108, as amended.

[23] Com. Act No. 108, Sec. 1 provides:

Section1. In all cases in which any constitutional or legal provision requires Philippine or United States citizenship as a requisite for the exercise or enjoyment of a right, franchise or privilege, any citizen of the Philippines or the United States who allows his name or citizenship to be used for the purpose of evading such provision, and any alien or foreigner profiting thereby, shall be punished by imprisonment for not less than two nor

and other acts deemed tantamount to the unlawful use, exploitation or enjoyment of a right, franchise, privilege, property or business, reserved to citizens.[25] In 1984, the Department of Justice, through

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more than ten years, and by a fine of not less than two thousand nor more than ten thousand pesos.

The fact that the citizen of the Philippines or of the United States charged with a violation of this Act had, at the time of the acquisition of his holdings in the corporations or associations referred to in section two of this Act, no real or personal property, credit or other assets the value of which shall at least be equivalent to said holdings, shall be admissible as circumstantial evidence of a violation of this Act.

[24] Com. Act No. 108, Sec. 2 provides:

Section 2. In all cases in which a constitutional or legal provision requires that, in order that a corporation or association may exercise or enjoy a right, franchise or privilege, not less than a certain per centum of its capital must be owned by citizens of the Philippines or the United States, or both, it shall be unlawful to falsely simulate the existence of such minimum of stock or capital as owned by such citizens of the Philippines or the United States or both, for the purpose of evading said provision.

The president or managers and directors or trustees of corporations or associations convicted of a violation of this section shall be punished by imprisonment for not less than two nor more than ten years, and by a fine of not less than two thousand nor more than ten thousand pesos.

[25] Com. Act No. 108, Sec. 2-A provides:

Section 2-A. Any person, corporation, or association[,] which, having in its name or under its control, a right, franchise, privilege, property or business, the exercise or enjoyment of which is expressly reserved by the Constitution or the laws to citizens of the Philippines or of any other specific country, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, permits or allows the use, exploitation or enjoyment thereof by a person, corporation or association not possessing the requisites prescribed by the Constitution or the laws of the Philippines; or leases, or in any other way, transfers or conveys said right, franchise, privilege, property or business to a person, corporation or association not otherwise qualified under the Constitution, or the provisions of the existing laws; or in any manner permits or allows any person, not possessing the qualifications required by the Constitution, or existing laws to acquire, use, exploit or enjoy a right, franchise, privilege, property or business, the exercise and enjoyment of which are expressly reserved by the Constitution or existing laws to citizens of the Philippines or of any other specific country, to intervene in the management, operation, administration or control thereof, whether as an officer, employee or laborer therein with or without remuneration except technical personnel whose

its Opinion No. 165, referenced the Anti-Dummy Law and identified the following "significant indicators" or badges of "dummy status":

1. That the foreign investor provides practically all the funds for the joint investment undertaken by Filipino businessmen and their foreign partner.
2. That the foreign investors undertake to provide practically all the technological support for the joint venture.
3. That the foreign investors, while being minority stockholders, manage the company and prepare all economic viability studies.[26]

The Grandfather Rule enables the piercing of ostensible control vested by ownership of 60% of a corporation's capital when methods are employed to disable Filipinos from exercising control and reaping the economic benefits of an enterprise.[27] This – more assiduous – examination of who actually controls and benefits from holding such capital may very well be a jealous

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employment may be specifically authorized by the Secretary of Justice, and any person who knowingly aids, assists or abets in the planning, consummation or perpetration of any of the acts herein above enumerated shall be punished by imprisonment for not less than five nor more than fifteen years and by a fine of not less than the value of the right, franchise or privilege enjoyed or acquired in violation of the provisions hereof but in no case less than five thousand pesos: Provided, however, that the president, managers or persons in charge of corporations, associations or partnerships violating the provisions of this section shall be criminally liable in lieu thereof: Provided, further, That any person, corporation or association shall, in addition to the penalty imposed herein, forfeit such right, franchise, privilege, and the property or business enjoyed or acquired in violation of the provisions of this Act: and Provided, finally, That the election of aliens as members of the board of directors or governing body of corporations or associations engaging in partially nationalized activities shall be allowed in proportion to their allowable participation or share in the capital of such entities.

[26] Sec. of Justice Op. No. 165, s. 1984.

[27] Dissenting Opinion of *J.* Leonen in *Narra Nickel Mining & Development Corp. v. Redmont Consolidated Mines Corp*., 733 Phil. 365, 478-479 (2014) [Per *J.* Velasco, Third Division].

means of protecting our patrimony, but fending off the challenges to our national integrity demands it.

The application of the Grandfather Rule hinges on circumstances. It is an extraordinary mechanism the operation of which is impelled by a reasonable sense of doubt that even as 60% of a corporation's capital is ostensibly owned by Filipinos, a more scrupulous arrangement may underlie that compliance and that nominal Filipino owners have become parties to the besmirching of their own national integrity. As the 2015 Resolution in *Narra Nickel* explained, "'[D]doubt' refers to various indicia that the 'beneficial ownership' and 'control' of the corporation do not in fact reside in Filipino shareholders but in foreign stakeholders."[28] It is necessary then, that proper evidentiary bases sustain resort to the Grandfather Rule.

Adopting mechanisms that may be well-meaning, but ultimately inadequate, reduces state organs to unwitting collaborators in the despoiling and pillaging of the Filipino's patrimony. Rather than work for and in the national interest, they fall prey to regulatory capture; facilitating private over public, or worse, foreign over national, gain.

The majority's limitation of capital to so-called voting stocks entrenches an operational definition that can be a gateway to violating the Constitution's righteous protection of our heritage. It licentiously empowers foreign interests to overrun public utilities, which are enterprises whose primary objectives should be the common good and not commercial gain, to wrest control of rights to our natural resources, and to takeover other crucial areas of investment.

The majority's November 22, 2016 Decision may have set us along this course. We have the opportunity to reverse that position and truly do justice to the Filipino.

ACCORDINGLY, I vote to grant the Motion for Reconsideration.

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[28] *Narra Nickel Mining and Development Corp. v. Redmont Consolidated Mines Corp.*, G.R. No. 195580, January 28, 2015, 748 SCRA 455, 478 [Per *J.* Velasco, Special Third Division Resolution].

EN BANC

[G.R. No. 214497. April 18, 2017]

EDUARDO QUIMVEL *y* BRAGA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; SUFFICIENCY OF COMPLAINT OR INFORMATION; THE INFORMATION MUST ALLEGE CLEARLY AND ACCURATELY THE ELEMENTS OF THE CRIME CHARGED; PURPOSE.— It is fundamental that, in criminal prosecutions, every element constituting the offense must be alleged in the Information before an accused can be convicted of the crime charged. This is to apprise the accused of the nature of the accusation against him, which is part and parcel of the rights accorded to an accused enshrined in Article III, Section 14(2) of the 1987 Constitution. x x x Jurisprudence has already set the standard on how the requirement is to be satisfied. Case law dictates that the allegations in the Information must be in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged and enable the court to know the proper judgment. The Information must allege clearly and accurately the **elements** of the crime charged. The facts and circumstances necessary to be included therein are determined by reference to the definition and elements of the specific crimes. The main purpose of requiring the elements of a crime to be set out in the Information is to enable the accused to suitably prepare his defense because he is presumed to have no independent knowledge of the facts that constitute the offense. The allegations of facts constituting the offense charged are substantial matters and the right of an accused to question his conviction based on facts not alleged in the information cannot be waived.

2. ID.; ID.; ID.; ID.; THE ACTUAL RECITAL OF FACTS STATED IN THE INFORMATION OR COMPLAINT DETERMINES THE REAL NATURE AND CAUSE OF THE ACCUSATION AGAINST AN ACCUSED.— [T]he

Court has consistently put more premium on the facts embodied in the Information as constituting the offense rather than on the designation of the offense in the caption. In fact, an investigating prosecutor is not required 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, not the caption or preamble thereof nor the specification of the provision of law alleged to have been violated, being conclusions of law. It then behooves this Court to place the text of the Information under scrutiny.

3. CRIMINAL LAW; REVISED PENAL CODE; ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336; ELEMENTS.— Conviction x x x [under Art. 336 of the RPC] requires that the prosecution establish the following elements: "1. That the offender commits any act of lasciviousness or lewdness; 2. That it is done under any of the following circumstances: a) Through force, threat, or intimidation; b) When the offended party is deprived of reason or otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority; d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present; and 3. That the offended party is another person of either sex."

4. ID.; SECTION 5(b) OF REPUBLIC ACT NO. 7610; LASCIVIOUS CONDUCT; REQUISITES.— Before an accused can be held criminally liable for lascivious conduct under Sec. 5(b) of RA 7610, the requisites of Acts of Lasciviousness as penalized under Art. 336 of the RPC x x x must be met in addition to the requisites for sexual abuse under Sec. 5(b) of RA 7610, which are as follows: "1. The accused commits the act of sexual intercourse or lascivious conduct. 2. **The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.** 3. That child, whether male or female, is below 18 years of age."

5. ID.; ID.; THE LAW PUNISHES NOT ONLY CHILD PROSTITUTION BUT ALSO OTHER FORMS OF SEXUAL ABUSE AGAINST CHILDREN.— To the mind of the Court, the allegations are sufficient to classify the victim as one "*exploited in prostitution or subject to other sexual abuse*."

This is anchored on the very definition of the phrase in Sec. 5 of RA 7610, which encompasses children who indulge in sexual intercourse or lascivious conduct (a) for money, profit, or any other consideration; or (b) under the coercion or influence of any adult, syndicate or group. Correlatively, Sec. 5(a) of RA 7610 punishes acts pertaining to or connected with child prostitution wherein the child is abused primarily for profit. On the other hand, paragraph (b) punishes sexual intercourse or lascivious conduct committed on a child subjected to other sexual abuse. It covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct. Hence, the law punishes not only child prostitution but also other forms of sexual abuse against children. x x x In the case at bar, the abuse suffered by AAA squarely falls under this expanded scope as there was no allegation of consideration or profit in exchange for sexual favor. As stated in the Information, petitioner committed lascivious conduct through the use of "*force*" and "*intimidation*."

6. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; CAUSE OF THE ACCUSATION; IT IS SUFFICIENT THAT THE CRIME IS DESCRIBED IN INTELLIGIBLE TERMS WITH SUCH PARTICULARITY AS TO APPRISE THE ACCUSED, WITH REASONABLE CERTAINTY, OF THE OFFENSE CHARGED.— It is not necessary that the description of the crime, as worded in the penal provision allegedly violated, be reproduced *verbatim* in the accusatory portion of the Information before the accused can be convicted thereunder. x x x The Court has held in a catena of cases that the rule is satisfied when the crime "*is described in intelligible terms with such particularity as to apprise the accused, with reasonable certainty, of the offense charged*." Furthermore, ***"[t]he use of derivatives or synonyms or allegations of basic facts constituting the offense charged is sufficient."***

7. CRIMINAL LAW; SECTION 5(b) OF REPUBLIC ACT NO. 7610; VIOLATION THEREOF OCCURS EVEN THOUGH THE ACCUSED COMMITTED SEXUAL ABUSE AGAINST THE CHILD VICTIM ONLY ONCE, EVEN WITHOUT PRIOR SEXUAL AFFRONT.— [T]he very definition of "*child abuse*" under Sec. 3(b) of RA 7610 does

not require that the victim suffer a separate and distinct act of sexual abuse aside from the act complained of. For it refers to the maltreatment, whether habitual or not, of the child. Thus, a violation of Sec. 5(b) of RA 7610 occurs even though the accused committed sexual abuse against the child victim only once, even without a prior sexual affront.

8. ID.; ID.; DOES NOT PRECLUDE THE PROSECUTION OF LASCIVIOUS CONDUCT PERFORMED BY THE SAME PERSON WHO SUBDUED THE CHILD THROUGH COERCION OR INFLUENCE.— The intervention by a third person is not necessary to convict an accused under Sec. 5 of RA 7610. x x x It is immaterial whether or not the accused himself employed the coercion or influence to subdue the will of the child for the latter to submit to his sexual advances for him to be convicted under paragraph (b). Sec. 5 of RA 7610 even provides that the offense can be committed by "***any adult,*** *syndicate or group,*" without qualification. The clear language of the special law, therefore, does not preclude the prosecution of lascivious conduct performed by the same person who subdued the child through coercion or influence. This is, in fact, the more common scenario of abuse that reaches this Court and it would be an embarrassment for us to rule that such instances are outside the ambit of Sec. 5(b) of RA 7610.

9. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF TRIAL COURTS, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, ARE GENERALLY BINDING AND CONCLUSIVE UPON THE SUPREME COURT.— Well-settled is the rule that, absent any clear showing of abuse, arbitrariness or capriciousness committed by the lower court, its findings of facts, especially when affirmed by the Court of Appeals, are binding and conclusive upon this Court. This is so because the observance of the deportment and demeanor of witnesses are within the exclusive domain of the trial courts. Thus, considering their unique vantage point, trial courts are in the best position to assess and evaluate the credibility and truthfulness of witnesses and their testimonies. In the case at bar, the RTC held that the prosecution duly established petitioner's guilt beyond reasonable doubt through AAA's straightforward testimony. The trial court observed that when AAA testified, she was able to steadily recount Quimvel's immodest acts x x x.

10. CRIMINAL LAW; SECTION 5(b) OF REPUBLIC ACT NO. 7610; DOES NOT REQUIRE PHYSICAL VIOLENCE ON THE PERSON OF THE VICTIM, AS MORAL COERCION OR ASCENDANCY IS SUFFICIENT.— [I]t is settled that the child is deemed subjected to other sexual abuse when the child engages in lascivious conduct under the coercion or influence of any adult. Intimidation need not necessarily be irresistible. It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party. The law does not require physical violence on the person of the victim; moral coercion or ascendancy is sufficient. x x x When the victim of the crime is a child under twelve (12) years old, mere moral ascendancy will suffice.

11. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; CANNOT PREVAIL AGAINST POSITIVE IDENTIFICATION.— Jurisprudence is replete of cases holding that denial and alibi are weak defenses, which cannot prevail against positive identification. A categorical and consistent positive identification which is not accompanied by ill motive on the part of the eyewitness prevails over mere denial. Such denial, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. It cannot be given a greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.

12. ID.; ID.; ALIBI; WHEN TO PROSPER AS A DEFENSE.— For his alibi to prosper, it was incumbent upon petitioner to prove that he was somewhere else when the offense was committed, and that he was so far away it would have been impossible for him to be physically present at the place of the crime or at its immediate vicinity at the time of the commission. But in his version of the events, petitioner failed to prove the element of physical impossibility since the house of AAA's grandmother, where he claimed to be at that time, is only 150 meters, more or less, from AAA's house. His alibi, therefore, cannot be considered exculpatory.

13. POLITICAL LAW; STATUTES; REPEALS BY IMPLICATION ARE DISFAVORED FOR LAWS ARE PRESUMED TO BE PASSED WITH DELIBERATION AND FULL KNOWLEDGE OF ALL LAWS EXISTING ON THE

SUBJECT.— Sec. 4 of RA 8353 did not expressly repeal Article 336 of the RPC for if it were the intent of Congress, it would have expressly done so. Rather, the phrase in Sec. 4 states: "*deemed amended, modified, or repealed accordingly*" qualifies "*Article 335 of Act No. 3815, as amended, and all laws, acts, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of [RA 8353]*." As can be read, repeal is not the only fate that may befall statutory provisions that are inconsistent with RA 8353. It may be that mere amendment or modification would suffice to reconcile the inconsistencies resulting from the latter law's enactment. In this case, Art. 335 of the RPC, which previously penalized rape through carnal knowledge, has been replaced by Art. 266-A. Thus, the reference by Art. 336 of the RPC to any of the circumstances mentioned on the erstwhile preceding article on how the crime is perpetrated should now refer to the circumstances covered by Art. 266-A as introduced by the Anti-Rape Law. We are inclined to abide by the Court's long-standing policy to disfavor repeals by implication for laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject. The failure to particularly mention the law allegedly repealed indicates that the intent was not to repeal the said law, unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and old laws. Here, RA 8353 made no specific mention of any RPC provision other than Art. 335 as having been amended, modified, or repealed. x x x [T]he Anti-Rape Law, on the one hand, and Art. 336 of the RPC, on the other, are not irreconcilable. The only construction that can be given to the phrase "*preceding article*" is that Art. 336 of the RPC now refers to Art. 266-A in the place of the repealed Art. 335. It is, therefore, erroneous to claim that Acts of Lasciviousness can no longer be prosecuted under the RPC.

PERALTA, *J.*, *separate concurring opinion*:

1. CRIMINAL LAW; VIOLATION OF SECTION 5(b), ARTICLE III OF REPUBLIC ACT NO. 7610 AND ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336 OF THE REVISED PENAL CODE, DISTINGUISHED.— Violation of the first clause of Section 5(b), Article III of R.A. 7610 is separate and distinct from acts of lasciviousness under Article 336 of the RPC. Aside from being dissimilar in the sense that

the former is an offense under special law, while the latter is a felony under the RPC, they also have different elements. On the one hand, the elements of violation of the first clause of Section 5(b) are: (1) accused commits the act of sexual intercourse or lascivious conduct; (2) the act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age. On the other hand, the elements of acts of lasciviousness under Article 336 are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done under any of the following circumstances: (a) by using force or intimidation; or (b) when the offended party is deprived of reason or otherwise unconscious; or (c) When the offended party is under 12 years of age; and (3) that the offended party is another person of either sex. Thus, the allegation that the child be "*exploited under prostitution or subjected to other sexual abuse*," need not be alleged in the information for acts of lasciviousness simply because it is not one of the elements of such crime as defined by Article 336 of the RPC.

2. ID.; REPUBLIC ACT NO. 7610; PROVIDES FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION SUCH THAT THE LAW INCREASED BY ONE DEGREE THE PENALTY FOR CERTAIN CRIMES WHEN THE VICTIM IS A CHILD UNDER TWELVE YEARS OF AGE.— Quimvel cannot be merely penalized with *prision correccional* for acts of lasciviousness under Article 336 of the RPC when the victim is a child because it is contrary to the letter and intent of R.A. 7610 to provide for stronger deterrence and special protection against child abuse, exploitation and discrimination. This legislative intent is expressed under Section 10, Article VI of R.A. 7610 which, among others, increased by one degree the penalty for certain crimes when the victim is a child under 12 years of age x x x. To impose upon Quimvel an indeterminate sentence computed from the penalty of *prision correccional* under Article 336 of the RPC would defeat the purpose of R.A. 7610 to provide for stronger deterrence and special protection against child abuse, exploitation and discrimination. **First,** the imposition of such penalty would erase the substantial distinction between acts of lasciviousness under Article 336 and acts of lasciviousness with

consent of the offended party under Article 339, which used to be punishable by *arresto mayor*, and now by *prision correccional* pursuant to Section 10, Article VI of R.A. 7610. **Second,** it would inordinately put on equal footing the acts of lasciviousness committed against a child and the same crime committed against an adult, because the imposable penalty for both would still be *prision correccional*, save for the aggravating circumstance of minority that may be considered against the perpetrator. **Third,** it would make acts of lasciviousness against a child an offense a probationable offense, pursuant to the Probation Law of 1976, as amended by R.A. 10707. Indeed, while the foregoing implications are favorable to the accused, they are contrary to the State policy and principles under R.A. 7610 and the Constitution on the special protection to children.

3. ID.; ID.; DOES NOT MERELY COVER A SITUATION WHEREIN A CHILD IS BEING ABUSED FOR PROFIT BUT ALSO ONE WHEREIN A CHILD ENGAGES IN ANY LASCIVIOUS CONDUCT THROUGH FORCE AND INTIMIDATION, EVEN IF SUCH SEXUAL ABUSE OCCURRED ONLY ONCE.— [A] single lascivious conduct is enough to penalize Quimvel for acts of lasciviousness under Article 336 of the RPC, in relation to R.A. 7610. x x x R.A. 7610 does not merely cover a situation wherein a child is being abused for profit as in prostitution, but also one wherein a child engages in any lascivious conduct through coercion or intimidation, even if such sexual abuse occurred only once, as in Quimvel's case. Also, x x x prostitution – which involves an element of habituality – is just one of the several other forms of sexual abuses. Thus, neither habituality nor the fact that the child is exploited in prostitution, is required to be alleged in the information for acts of lasciviousness because Article 336 of the RPC does not so provide.

4. ID.; ID.; OTHER SEXUAL ABUSE; THE PHRASE DOES NOT COVER OTHER FORMS OF SEXUAL ABUSE THAT A CHILD MIGHT HAVE PREVIOUSLY EXPERIENCED, OTHER THAN BEING EXPLOITED IN PROSTITUTION FOR PROFIT, OR FOR ANY OTHER CONSIDERATION.— [T]he title of Article III of R.A. 7610 itself is clear that the subsequent provisions thereof pertain not only on the subject of "child prostitution" but also on "other sexual abuse." x x x To construe "other sexual abuse" as referring to any other sexual

abuse other than the acts of lasciviousness complained of is wrong. The law did not use such phrase in order to cover other forms of sexual abuse that a child might have previously experienced, other than being exploited in prostitution for profit, or for any other consideration. Instead, the law clearly distinguishes those children who indulged in sexual intercourse or lascivious conduct for money, profit, or any other consideration, from those children who, without money, profit, or any other consideration, had sexual intercourse or lascivious conduct due to the coercion or influence of any adult, syndicate or group. This is further bolstered by the use of the disjunctive word "or" in separating the two contexts contemplated in the law. Thus, it is erroneous to interpret that R.A. 7610 contemplates situations wherein a child, who was already subjected to prostitution or other sexual abuse, is again subjected to another abuse or lascivious conduct. Note that in the definition of "child abuse," the phrase "whether habitual or not" is used to describe the frequency upon which a maltreatment can be considered as an abuse. Thus, a single act of abuse is enough for a perpetrator to be considered as having violated the law. To interpret it otherwise would lead to an absurdity and ambiguity of the law.

5. ID.; REVISED PENAL CODE; ARTICLE 336; MODIFIED BY REPUBLIC ACT NO. 8353 (THE ANTI-RAPE LAW OF 1997).— R.A. 8353 only modified Article 336 of the RPC, as follows: (1) by carrying over to acts of lasciviousness the additional circumstances applicable to rape, *viz*.: threat and fraudulent machinations or grave abuse of authority; (2) by retaining the circumstance that the offended party is under 12 years old, and including dementia as another one, in order for acts of lasciviousness to be considered as statutory, wherein evidence of force or intimidation is immaterial because the offended party who is under 12 years old or demented, is presumed incapable of giving rational consent; and (3) by removing from the scope of acts of lasciviousness and placing under the crime of rape by sexual assault the specific lewd act of inserting the offender's penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. In fine, Article 336 of the RPC, as amended, is still a good law despite the enactment of R.A. 8353 for there is no irreconcilable inconsistency between their provisions.

PERLAS-BERNABE, *J.*, *concurring opinion*:

CRIMINAL LAW; SECTION 5(b), ARTICLE III OF REPUBLIC ACT NO. 7610 (THE SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT); COVERS A SITUATION WHEREIN A CHILD ENGAGES IN ANY LASCIVIOUS CONDUCT THROUGH COERCION OR INTIMIDATION, EVEN IF SUCH SEXUAL ABUSE OCCURRED ONLY ONCE.— [Section 5(b), Article III of RA 7610] covers a situation wherein a child engages in any lascivious conduct through coercion or intimidation, even if such sexual abuse occurred only once, as in Quimvel's case. To my mind, the law does not contemplate a situation where the acts of lasciviousness are committed on a child priorly exploited in prostitution or subjected to other sexual abuse. This latter position effectively requires allegation and proof of a first act of abuse committed against the same child victim for a sex offender to be convicted. x x x I deem it enough that a singular act of sexual abuse be committed against a minor in order to qualify under the law's protection: ***First*,** the prevailing Congressional intent behind RA 7610 was to establish "[a] national program for protection of children" which needs "not only the institutional protective mechanisms, but also a mechanism for strong deterrence against commission of abuse and exploitation." x x x [I]f RA 7610 was directly meant to reinforce the legal framework against the sexual abuse of minors, it would not make any sense to first require a preliminary act of sexual abuse against a child before a sex offender could be punished under the same. Indeed, a person's chastity – much more a child's – is undoubtedly sacred and once ravaged, is forever lost and leaves a scar on his or her well-being. As such, our lawmakers, in crafting a special legislation precisely to deter child abuse, would not have thought of such absurdity**. *Second*,** it is difficult – if not, insensible – to operationalize the application of RA 7610 under the theory that the commission of a prior act of sexual abuse is required before a lascivious conduct may be penalized under Section 5 (b) of the same law. For one, no operational parameter was provided by law to determine the existence of a prior sexual abuse so as to satisfy the preliminary element of the aforementioned theory. It is unclear whether a prior sexual abuse on the same child victim should be pronounced

in an official court declaration, or whether a mere finding on that matter in the same case would suffice.x x x ***And third***, while the grammatical structure of Section 5 (b) of RA 7610 may, if construed literally, be taken to mean that the victim should be one who is first "exploited in prostitution or subjected to other sexual abuse" x x x, this interpretation would surely depart from the law's purpose based on its policy considerations x x x. On the other hand, it is my view that Section 5 (b) can be construed in another way, in order to give full life and meaning to its avowed purpose, which is to "provide stiffer penalties for abuse of children and to facilitate prosecution of perpetrators of abuse."

CARPIO, *J.*, *dissenting opinion:*

1. CRIMINAL LAW; REVISED PENAL CODE; ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336; ELEMENTS.— [T]he crime of acts of lasciviousness under Article 336 of the RPC has the following elements: 1. That the offender commits any act of lasciviousness or lewdness; 2. That the act of lasciviousness is committed against a person of either sex; 3. That it is done under any of the following circumstances: a. By using force or intimidation; b. When the offended party is deprived of reason or otherwise unconscious; or c. When the offended party is under 12 years of age or is demented.

2. ID.; SECTION 5(b) OF REPUBLIC ACT NO. 7610; LASCIVIOUS CONDUCT; ELEMENTS.— Section 5(b) of RA 7610 has the following elements: 1. The accused commits the act of sexual intercourse or lascivious conduct. 2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse. 3. That child, whether male or female, is below 18 years of age.

3. ID.; ARTICLE 336 OF THE REVISED PENAL CODE AND SECTION 5(b) OF REPUBLIC ACT NO. 7610, DISTINGUISHED.— [F]or an accused to be held criminally liable for lascivious conduct under Section 5(b) of RA 7610, the requisites under Article 336 of the RPC must be met **in addition** to the requisites under Section 5(b) of RA 7610. Moreover, based on the elements of Article 336 of the RPC and Section 5(b) of RA 7610 x x x, it is evident that both provisions share some similar elements. The main difference lies in the second element of Section 5(b) of RA 7610 that the

act is performed with a child exploited in prostitution or subjected to other sexual abuse. Thus, to be convicted of lascivious conduct under Section 5(b) of RA 7610 – rather than acts of lasciviousness under Article 336 of the RPC – it is essential to prove that the child against whom the act was committed is a child exploited in prostitution or subjected to other sexual abuse. **Thus, the difference is clear: under Article 336 of the RPC, the accused performs the act of lasciviousness with a child who is neither exploited in prostitution nor subjected to "other sexual abuse" while under Section 5(b) of RA 7610, the act is performed with a child who is either exploited in prostitution or subjected to "other sexual abuse."**

4. ID.; SECTION 5(b) OF REPUBLIC ACT NO. 7610; ELEMENTS; THE FIRST ELEMENT REFERS TO THE VERY ACT COMPLAINED OF AGAINST THE ACCUSED WHILE THE SECOND ELEMENT REFERS TO THE CIRCUMSTANCE OF THE CHILD AGAINST WHOM THE ACT WAS COMMITTED.— I would like to distinguish the first and second elements of Section 5(b) of RA 7610. The first element – that the accused commits the act of sexual intercourse or lascivious conduct – refers to the very act complained of against the accused. The second element - that the act is performed with a child exploited in prostitution or subjected to other sexual abuse – refers to the circumstance of the child against whom the act was committed. This second element does not necessarily have any relation to the act of the accused as this relates to the child alone. The first and second elements refer to two entirely different and separate matters. One refers to the act committed by the accused while the other refers to the circumstance of the child victim, which may or may not be related to the act committed by the accused.

5. ID.; SECTION 5 OF REPUBLIC ACT NO. 7610; CHILD PROSTITUTION AND OTHER SEXUAL ABUSE; COERCION OR INFLUENCE; DOES NOT, BY ITSELF MAKE THE CHILD SUBJECTED TO OTHER SEXUAL ABUSE, FOR COERCION OR INFLUENCE SHOULD REFER TO THE CIRCUMSTANCE OF THE CHILD AND NOT TO THE LASCIVIOUS CONDUCT COMPLAINED OF.— [B]eing under the "coercion or influence" of an adult does not, by itself, make the child automatically subjected to "other sexual abuse." x x x [Section 5 of RA 7610] was crafted

to cover a situation where sexual intercourse or lascivious conduct is performed with **a child who is being abused or misused for sexual purposes.** The phrase "or any other consideration or due to the coercion or influence of any adult, syndicate or group" was added to merely cover situations where a child is abused or misused for sexual purposes without any monetary gain or profit. This was significant because profit or monetary gain is essential in prostitution. Thus, the lawmakers intended that in case all the other elements of prostitution are present, but the monetary gain or profit is missing, the sexually abused and misused child would still be afforded the same protection of the law as if he or she were in the same situation as a child exploited in prostitution. Accordingly, "coercion or influence," on its own, does not make the child subjected to "other sexual abuse." The "coercion or influence" must have been used to abuse or misuse the child for sexual purposes, and again, this must have been the circumstance of the child when the act complained of - the lascivious conduct of the accused – was performed against the child. The "coercion or influence" should refer to the circumstance of the child and not to the lascivious conduct complained of.

6. ID.; ARTICLE 336 OF THE REVISED PENAL CODE (RPC) AND SECTION 5(b) OF REPUBLIC ACT NO. 7610; "FORCE OR INTIMIDATION" AND "COERCION OR INFLUENCE"; UNDER ARTICLE 336 OF THE RPC, FORCE AND INTIMIDATION MUST BE UNDERSTOOD IN RELATION TO THE ACT COMPLAINED OF WHILE COERCION OR INFLUENCE AS USED IN RA 7610 SHOULD BE READ WITH REFERENCE TO THE CIRCUMSTANCE OF THE CHILD.— "[F]orce or intimidation" under Article 336 of the RPC must be understood in relation to the act complained of, that is, whether the lascivious conduct was done with force or intimidation against the victim. In contrast, "coercion or influence" as used in RA 7610 should be read with reference to the circumstance of the child, that is, whether "coercion or influence" was used to exploit the child in prostitution or to subject the child to "other sexual abuse."

7. ID.; SECTION 5(b) OF REPUBLIC ACT NO. 7610; PROSTITUTION OR BEING SUBJECTED TO OTHER SEXUAL ABUSE; INCLUDED AS ONE OF THE

ELEMENTS BECAUSE OF THE GREATER NEED TO PROTECT SEXUALLY MISUSED OR ABUSED CHILDREN.— It is clear that the lawmakers intended to afford more protection to the sexually misused and abused children rather than those children who were not. There simply would have been no need to include the element that the child is exploited in prostitution or subjected to "other sexual abuse" if this were not the case. If the intention of the law was merely to protect children against sexual abuse, without regard to their circumstance of being exploited in prostitution or subjected to other sexual abuse, the provision could have simply omitted the reference to prostitution or other sexual abuse so that all children would be covered under this provision. However, the lawmakers expressly included prostitution or being subjected to "other sexual abuse" as one of the elements of Section 5(b) of RA 7610 because of the greater need to protect such children. And because of this greater need, a higher penalty is imposed as well.

8. REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENTS; VARIANCE DOCTRINE; APPLIED IN CASE AT BAR.— In this case, x x x it was not alleged or proven that the child victim was exploited in prostitution or subjected to "other sexual abuse." As it is fundamental that every element of the crime must be alleged in the complaint or information against the accused, there is no basis to convict Quimvel for violation of Section 5(b) of RA 7610. x x x The second element of Section 5(b) of RA 7610 was not clearly and accurately alleged against Quimvel, and there was also no allegation of any material fact that would establish the element that the child was exploited in prostitution or subjected to "other sexual abuse." x x x The element that the child was exploited in prostitution or subjected to other sexual abuse increases the penalty from *prision correccional* to *reclusion temporal* in its medium period if the victim is under 12 years old. This element distinguishes whether the crime would be punishable under RA 7610 or under the RPC. Thus, there is a need to strictly construe this element. x x x However, the Information is sufficient to charge the accused for acts of lasciviousness under Article 336 of the RPC, in accordance with the variance doctrine under the Rules of Court. While the circumstance of the child as a child exploited in prostitution or subjected to "other sexual abuse" was not alleged

or proven, all the elements of Article 336 of the RPC were clearly and accurately alleged in the Information, and thereafter proven during the course of the trial.

CAGUIOA, *J., dissenting opinion:*

1. CRIMINAL LAW; REPUBLIC ACT NO. 7610; DOES NOT INCLUDE ANY AND ALL CRIMES AGAINST CHILDREN THAT ARE ALREADY COVERED BY OTHER PENAL LAWS.— The Senate deliberations on RA 7610 is replete with x x x disquisitions tending to show the intendment to make the law applicable to cases involving child exploitation through prostitution, sexual abuse, child trafficking, pornography and other types of abuses; the passage of the law was the Senate's act of heeding the call of the Supreme Court to afford protection to a special class of children and not to cover any and all crimes against children that are already covered by other penal laws such as the RPC and the Child and Youth Welfare Code. x x x I find nothing in the language of the law or in the Senate deliberations that necessarily leads to the conclusion that RA 7610 subsumes all instances of sexual abuse against children**.**

2. ID.; SECTION 5(b) OF REPUBLIC ACT NO. 7610; ELEMENTS.— [The] essential elements [of Section 5(b) of RA 7610] are: (1) The accused commits the act of sexual intercourse or *lascivious conduct*; (2) The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) The child whether male or female, is below 18 years of age.

3. ID.; ID.; TO IMPOSE THE HIGHER PENALTY PROVIDED THEREIN, IT MUST BE ALLEGED AND PROVED THAT THE CHILD IS EXPLOITED IN PROSTITUTION OR SUBJECTED TO OTHER SEXUAL ABUSE.— [A] person can only be convicted of violation of Article 336 in relation to Section 5(b), upon allegation and proof of the unique circumstances of the child – that he or she is exploited in prostitution or subjected to other sexual abuse. x x x In its bare essentials, the second element can be met by allegation and proof of either circumstance: a) the child is exploited in prostitution; OR b) the child is subjected to other sexual abuse which should already be existing at the time of sexual intercourse or lascivious conduct complained of. Otherwise stated, in order to impose the higher penalty provided in Section 5(b) as compared

to Article 336, it must be alleged and proved that the child – (1) for money, profit, or any other consideration or (2) due to the coercion or influence of any adult, syndicate or group – indulges in sexual intercourse or lascivious conduct. x x x The circumstances of the child can be proved in any manner allowed by the Rules of Court, as by testimony of the child himself or herself, or any other person who has personal knowledge of the child's circumstances. Ultimately, if difficulty is encountered in operationalizing a provision – in terms of evidence required – it is within the province of the Court to lay down guidelines in appreciating a fact as an element of the crime or as a qualifying circumstance x x x.

4. ID.; ID.; PRIOR SEXUAL AFFRONT IS NOT REQUIRED TO BE SHOWN IN EVERY INSTANCE TO CHARACTERIZE THE CHILD AS ONE SUBJECTED TO OTHER SEXUAL ABUSE.— That is not to say that in every instance, prior sexual affront upon the child must be shown to characterize the child as one "subjected to other sexual abuse". What is only necessary is to show that the child is already a child exploited in prostitution or subjected to other sexual abuse at the time the sexual intercourse or lascivious conduct complained of was committed or that circumstances obtain prior or during the first instance of abuse that constitutes such first instance of sexual intercourse or lascivious conduct as having converted the child into a child "exploited in prostitution or subjected to other sexual abuse." x x x [A]lleging and proving the second element do not require a prior sexual affront; precisely, because a prior sexual affront is not the only way to satisfy the second element. x x x A child is procured, induced, or threatened to become a prostitute by any person, in violation of Section 5(a). In this instance, the person who has sexual intercourse or performs lascivious acts upon the child, even if this were the very first act by the child, already makes the person liable under Section 5(b), because the very fact that someone had procured the child to be used for another person's sexual gratification in exchange for money, profit or other consideration already qualifies the child as a child exploited in prostitution. In this instance, no requirement of a prior sexual affront is required. In cases where any person, under the circumstances of Section 5(a), procures, induces, or threatens a child to engage in any sexual activity with another person, even without an allegation

or showing that the impetus is money, profit or other consideration, the first sexual affront by the person to whom the child is offered already triggers Section 5(b) because the circumstance of the child being offered to another already qualifies the child as one subjected to other sexual abuse. Similar to these situations, the first sexual affront upon a child shown to be performing in obscene publications and indecent shows, or under circumstances falling under Section 6 is already a violation of Section 5(b) because these circumstances are sufficient to qualify the child as one subjected to other sexual abuse.

5. ID.; ID.; THE PENALTY OF *RECLUSION TEMPORAL* IN ITS MEDIUM PERIOD SHOULD BE IMPOSED WHEN THE VICTIM IS A CHILD EXPLOITED IN PROSTITUTION OR SUBJECTED TO OTHER SEXUAL ABUSE, AND UNDER TWELVE YEARS OLD.— [I]n prosecutions for lascivious conduct under Article 336 when the victim is (1) a child exploited in prostitution or subjected to other sexual abuse, **AND** (2) under twelve (12) years old, the penalty would be *reclusion temporal* in its medium period. In this context, it cannot be said that the penalty for all prosecutions for lascivious conduct under Article 336 is *reclusion temporal* in its medium period. As it should be, prosecution for acts of lasciviousness that do not involve a child exploited in prostitution or subjected to other sexual abuse even if she were under twelve (12) years old, the penalty should – as it should be meted on Quimvel – be the penalty provided in the RPC, which is *prision correccional*. Section 5(b), as worded and as intended, is a small subset of the universe of lascivious conduct covered by Article 336, thereby requiring allegation and proof of the specific circumstances required for it to operate – which, put simply, are composed of its essential elements.

6. ID.; REVISED PENAL CODE; ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336; REMAINS A DISTINCT AND SUBSISTING CRIME FROM REPUBLIC ACT NO. 7610.— Article 336 remains an operative provision, and the crime of acts of lasciviousness under the RPC remains a distinct and subsisting crime from RA 7610. While rape was relocated to the title on crimes against persons, Article 336 can fairly be read to refer to the provision that replaced Article 335 (Article 266) to save it from becoming non-operational. The legislative

intent to have the provisions of RA 7610 to operate ***side by side*** with the provisions of the RPC – and a recognition that the latter remain effective – can be gleaned from Section 10 of the law x x x.

7. ID.; ARTICLE 336 OF THE REVISED PENAL CODE AND SECTION 5(b) OF REPUBLIC ACT NO. 7610; CONSIDERED SEPARATE OFFENSES WITH DISTINCT ESSENTIAL ELEMENTS.— "Common" or "ordinary" acts of lasciviousness under Article 336 and lascivious conduct under Article 336 in relation to Section 5(b) are separate offenses, with distinct essential elements. To hold that the allegation and proof of the existence of an element of one can take the place of what has been jurisprudentially defined as an element of another muddles the understanding of these two offenses, and effectively constitutes judicial legislation as it results in a partial repeal of Article 336 through a change of its essential elements. The essential elements of acts of lasciviousness under Article 336 of the RPC are as follows: "1. That the offender commits any act of lasciviousness or lewdness; 2. That the act of lasciviousness is committed against a person of either sex; 3. That it is done under any of the following circumstances: a. *By using force or intimidation*; or b. When the offended party is deprived of reason or otherwise unconscious; [or] c. By means of fraudulent machination or grave abuse of authority; or d. When the offended party is under 12 years of age or is demented." On the other hand, Section 5(b)'s essential elements are as follows: "1. The accused commits the act of sexual intercourse or *lascivious conduct*. 2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse. 3. The child, whether male or female, is below 18 years of age."

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the May 29, 2014 Decision[1] and September 15, 2014 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CR No. 35509.[3] The challenged rulings sustained the petitioner's conviction[4] of the crime of Acts of Lasciviousness in relation to Sec. 5(b), Article III of Republic Act No. (RA) 7610.[5]

The Information reads:[6]

AMENDED INFORMATION

The Undersigned Assistant City Prosecutor of Ligao City hereby accuses EDUARDO QUIMVEL y BRAGA also known as EDWARD/ EDUARDO QUIMUEL y BRAGA of the crime of Acts of Lasciviousness in relation to Section 5(b) of R.A. No. 7610, committed as follows:

> That on or about 8 o'clock in the evening of July 18, 2007 at Palapas, Ligao City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, through force and intimidation, did then and there, willfully, unlawfully and feloniously, insert his hand inside the

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[1] *Rollo*, pp. 29-40. Penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Elihu A. Ybañez and Carmelita S. Manahan.

[2] *Id.* at 42-43.

[3] Entitled *People of the Philippines v. Eduardo Quimvel y Braga a.k.a. Eduardo/ Edward Quimuel y Braga*.

[4] With modification as to the amount of damages.

[5] AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES.

[6] *Rollo*, p. 65.

panty of [AAA],[7] a minor of 7 years old and mash her vagina, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.

The Facts

The facts of the case, as can be gleaned from the Decision of the CA, are as follows:[8]

AAA, who was seven years old at the time of the incident, is the oldest among the children of XXX and YYY. XXX worked as a household helper in Batangas while YYY was a *Barangay Tanod* who derived income from selling vegetables. AAA and her siblings, BBB and CCC, were then staying with YYY in Palapas, Ligao City.

On the other hand, Quimvel, at that time, was the caretaker of the ducks of AAA's grandfather. He lived with AAA's grandparents whose house was just a few meters away from YYY's house.

At around 8 o'clock in the evening of [July 18,] 2007, YYY went out of the house to buy kerosene since there was no electricity. While YYY was away, Quimvel arrived bringing a vegetable viand from AAA's grandfather. AAA requested Quimvel to stay with them as she and her siblings were afraid. He agreed and accompanied them. AAA and her siblings then went to sleep. However, she was awakened when she felt Quimvel's right leg on top of her body. She likewise sensed Quimvel inserting his right hand inside her panty. In a trice, she felt Quimvel caressing her private part. She removed his hand.

Quimvel was about to leave when YYY arrived. She asked him what he was doing in his house. Quimvel replied that he was just

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[7] Any information to establish or compromise the identity of the victim, as well as those of her immediate family or household members, shall be withheld, and fictitious initials are used, pursuant to RA 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 15, 2004; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[8] *Rollo*, pp. 30-31.

accompanying the children. After he left, YYY and his children went back to sleep.

On [July 29,] 2007, XXX arrived from Batangas. Later in the evening while XXX was lying down with her children, she asked them what they were doing while she was away. BBB told her that Quimvel touched her *Ate*. When XXX asked AAA what Quimvel did to her, she recounted that Quimvel laid down beside her and touched her vagina.

Upon hearing this, XXX and YYY went to the Office of the *Barangay Tanod* and thereafter to the police station to report the incident. Afterwards, they brought AAA to a doctor for medical examination.

As expected, Quimvel denied the imputation hurled against him. He maintained that he brought the ducks of AAA's grandmother to the river at 7 o'clock in the morning, fetched it and brought it back at AAA's grandmother's place at 4 o'clock in the afternoon of [July 18,] 2007. After that, he rested. He said that he never went to AAA's house that evening. When YYY confronted and accused him of touching AAA, he was totally surprised. Even if he denied committing the crime, he was still detained at the *Barangay* Hall. He was then brought to the police station for interrogation. Eventually, he was allowed to go home. He did not return to the house of AAA's grandmother to avoid any untoward incidents.

Ruling of the Trial Court

Lending credence to AAA's straightforward and categorical testimony, the Regional Trial Court (RTC), Branch 11 in Ligao City, Albay, on January 23, 2013, rendered its Judgment[9] finding petitioner guilty beyond reasonable doubt of the crime charged. The dispositive portion of the judgment reads:[10]

WHEREFORE, in the light of the foregoing, judgment is hereby rendered:

1. Finding the accused, EDUARDO QUIMVEL Y BRAGA a.k.a. EDWARD/ EDUARDO QUIMUEL Y BRAGA, GUILTY beyond reasonable doubt of the crime of Acts of Lasciviousness in relation

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[9] *Id.* at 65-73. Penned by Judge Amy Ana L. De Villa-Rosero.

[10] *Id.* at 73.

to Section 5 (b), Article III of R.A. 7610 and thereby sentenced him to suffer the penalty of imprisonment from FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of Reclusion Temporal in its medium period as minimum to FIFTEEN (15) YEARS, SIX (6) MONTHS and NINETEEN (19) DAYS of Reclusion Temporal in its medium period as maximum; and

2. ORDERING the accused, EDUARDO QUIMVEL Y BRAGA a.k.a. EDWARD/ EDUARDO QUIMUEL Y BRAGA, to pay the victim the amount of ₱30,000.00 as moral damages and to pay a fine in the amount of ₱30,000.00.

In the service of his sentence, accused EDUARDO QUIMVEL Y BRAGA a.k.a. EDWARD/ EDUARDO QUIMVEL Y BRAGA shall be credited with the period of his preventive detention pursuant to Article 29 of the Revised Penal Code.

No costs.

SO ORDERED.

Ruling of the Appellate Court

Thereafter, petitioner lodged an appeal with the CA but to no avail. For on May 29, 2014, the CA rendered its assailed Decision affirming, with modification, the Judgment of the trial court. The dispositive portion of the Decision provides:[11]

WHEREFORE, the Decision dated 23 January 2013 of the Regional Trial Court, Fifth Judicial Region, Ligao City Branch 11, in Criminal Case No. 5530, is hereby MODIFIED in that accused-appellant EDUARDO QUIMVEL y BRAGA also known as EDUARDO/ EDWARD QUIMUEL y BRAGA is ORDERED to pay the victim, AAA moral damages, exemplary damages and fine in the amount of ₱15,000.00 each as well as ₱20,000.00 as civil indemnity. All damages shall earn interest at the rate of six percent (6%) per annum from the date of finality of this judgment.

SO ORDERED.

The Issues

Aggrieved, Quimvel elevated his case to this Court and raised the following issues for resolution:

[11] *Id*. at 39-40.

I.

The CA erred in affirming the decision of the trial court as the prosecution was not able to prove that he is guilty of the crime charged beyond reasonable doubt.

II.

Assuming without admitting that he is guilty hereof, he may be convicted only of acts of lasciviousness under Art. 336 of the Revised Penal Code (RPC) and not in relation to Sec. 5(b) of RA 7610.

The Court's Ruling

We affirm the CA's Decision finding petitioner guilty beyond reasonable doubt of the crime of Acts of Lasciviousness as penalized under Sec. 5(b) of RA 7610.

The Information charged the crime of Acts of Lasciviousness under Sec. 5(b) of RA 7610

Petitioner contends that, granting without admitting that he is guilty of Acts of Lasciviousness, he should only be held liable for the crime as penalized under the RPC and not under RA 7610. According to him, to be held liable under the latter law, it is necessary that the victim is involved in or subjected to prostitution or other sexual abuse, and that the failure to allege such element constituted a violation of his constitutional right to be informed of the nature and the cause of accusation against him.[12]

His argument fails to persuade.

i. The acts constituting the offense must be alleged in the Information

It is fundamental that, in criminal prosecutions, every element constituting the offense must be alleged in the Information before an accused can be convicted of the crime charged. This is to

[12] *Id*. at 20-21. *Olivarez v. Court of Appeals*, 503 Phil. 421 (2005).

apprise the accused of the nature of the accusation against him, which is part and parcel of the rights accorded to an accused enshrined in Article III, Section 14(2) of the 1987 Constitution.[13] Section 6, Rule 110 of the Rules of Court, in turn, pertinently provides:

Section 6. *Sufficiency of complaint or information*.—A complaint or information is sufficient if it states the name of the accused, the designation of the offense by the statute, **the acts or omissions complained of as constituting the offense**; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. (emphasis added)

Jurisprudence has already set the standard on how the requirement is to be satisfied. Case law dictates that the allegations in the Information must be in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged and enable the court to know the proper judgment. The Information must allege clearly and accurately the **elements** of the crime charged. The facts and circumstances necessary to be included therein are determined by reference to the definition and elements of the specific crimes.[14]

The main purpose of requiring the elements of a crime to be set out in the Information is to enable the accused to suitably prepare his defense because he is presumed to have no independent knowledge of the facts that constitute the offense. The allegations of facts constituting the offense charged are

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[13] Section 14. x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to 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. (emphasis added)

[14] *Serapio v. Sandiganbayan (Third Division),* 444 Phil. 499, 522 (2003).

substantial matters and the right of an accused to question his conviction based on facts not alleged in the information cannot be waived.[15] As further explained in *Andaya v. People:*[16]

> No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. **The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights.** (emphasis added)

Indeed, the Court has consistently put more premium on the facts embodied in the Information as constituting the offense rather than on the designation of the offense in the caption. In fact, an investigating prosecutor is not required 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, not the caption or preamble thereof nor the specification of the provision of law alleged to have been violated, being conclusions of law.[17] It then behooves this Court to place the text of the Information under scrutiny.

ii. The elements of the offense penalized under Sec. 5(b) of RA 7610 were sufficiently alleged in the Information

In the case at bar, petitioner contends that the Information is deficient for failure to allege all the elements necessary in committing Acts of Lasciviousness under Sec. 5(b) of RA 9160.

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[15] *Andaya v. People*, 526 Phil. 480 (2006).

[16] *Id*. at 497.

[17] *Espino v. People*, 713 Phil. 377 (2013), citing *People v. Manalili*, 355 Phil. 652, 688 (1998).

His theory is that the Information only charges him of the crime as punished under Art. 336 of the RPC, which pertinently reads:

Art. 336. *Acts of lasciviousness*.– Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned on the preceding article, shall be punished by *prision correccional.*

Conviction thereunder requires that the prosecution establish the following elements:

1. That the offender commits any act of lasciviousness or lewdness;

2. That it is done under any of the following circumstances:[18]

    a) Through force, threat, or intimidation;
    b) When the offended party is deprived of reason or otherwise unconscious;
    c) By means of fraudulent machination or grave abuse of authority;
    d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present; and

3. That the offended party is another person of either sex.

On the other hand, the prosecution endeavored to prove petitioner's guilt beyond reasonable doubt for child abuse under Sec. 5(b) of RA 7610, which provides:

Section 5. ***Child Prostitution and Other Sexual Abuse*****. – Children,** whether male or female, who for money, profit, or any other consideration or **due to the coercion or influence of any adult**, syndicate or group, **indulge in sexual intercourse or lascivious conduct**, **are deemed to be children exploited in prostitution and other sexual abuse.**

The penalty of reclusion temporal in its medium period to *reclusion perpetua* shall be imposed upon the following:

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[18] The circumstances under which rape can be committed under Art. 335 of the Revised Penal Code have been modified by Republic Act No. 8353, otherwise known as the Anti-Rape Law.

x x x x x x x x x

(b) Those who commit the act of sexual intercourse or **lascivious conduct with a child exploited in prostitution or subject to other sexual abuse**; Provided, That when the [victim] is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; x x x (emphasis added)

Before an accused can be held criminally liable for lascivious conduct under Sec. 5(b) of RA 7610, the requisites of Acts of Lasciviousness as penalized under Art. 336 of the RPC earlier enumerated must be met in addition to the requisites for sexual abuse under Sec. 5(b) of RA 7610, which are as follows:[19]

1. The accused commits the act of sexual intercourse or lascivious conduct.

2. **The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.**

3. That child, whether male or female, is below 18 years of age.[20] (emphasis supplied)

Hypothetically admitting the elements of Art. 336 of the RPC, as well as the first and third elements under RA 7610 - that a lascivious act was committed against AAA who at that time was below twelve (12) years old - petitioner nevertheless contends that the second additional element, requiring that the victim is a child *"exploited in prostitution or subjected to other sexual abuse,"* is absent in this case.

The fault in petitioner's logic lies in his misapprehension of how the element that the victim is "*exploited in prostitution or subjected to other sexual abuse"* should be alleged in the Information.

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[19] *Cabila v. People*, G.R. No. 173491, November 23, 2007, 538 SCRA 695.

[20] *Ebalada v. People*, G.R. No. 157718, April 26, 2005, 457 SCRA 282.

Guilty of reiteration, the accusatory portion of the Information reads:

AMENDED INFORMATION

The Undersigned Assistant City Prosecutor of Ligao City hereby accuses EDUARDO QUIMVEL y BRAGA also known as EDWARD/ EDUARDO QUIMUEL y BRAGA of the crime of **Acts of Lasciviousness in relation to Section 5(b) of R.A. No. 7610**, committed as follows:

That on or about 8 o'clock in the evening of July 18, 2007 at Palapas, Ligao City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, **through force and intimidation**, did then and there, willfully, unlawfully and feloniously, insert his hand inside the panty of [AAA],[21] a minor of 7 years old and mash her vagina, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.[22] (emphasis added)

To the mind of the Court, the allegations are sufficient to classify the victim as one "*exploited in prostitution or subject to other sexual abuse.*" This is anchored on the very definition of the phrase in Sec. 5 of RA 7610, which encompasses children who indulge in sexual intercourse or lascivious conduct (a) for money, profit, or any other consideration; or (b) under the coercion or influence of any adult, syndicate or group.[23]

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[21] Any information to establish or compromise the identity of the victim, as well as those of her immediate family or household members, shall be withheld, and fictitious initials are used, pursuant to RA 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 15, 2004; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[22] *Rollo*, p. 65.

[23] *People v. Larin*, 357 Phil. 987 (1998).

Correlatively, Sec. 5(a) of RA 7610 punishes acts pertaining to or connected with child prostitution wherein the child is abused primarily for profit. On the other hand, paragraph (b) punishes sexual intercourse or lascivious conduct committed on a child subjected to other sexual abuse. It covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct.[24] Hence, the law punishes not only child prostitution but also other forms of sexual abuse against children. This is even made clearer by the deliberations of the Senate, as cited in the landmark ruling of *People v. Larin*:[25]

> Senator Angara. I refer to line 9, **'who for money or profit.'** I would like to amend this, Mr. President, to cover a situation where the minor may have been coerced or intimidated into this lascivious conduct, not necessarily for money or profit, so that we can cover those situations and not leave loophole in this section.
>
> The proposal I have is something like this: WHO FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR DUE TO THE COERCION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP INDULGE, et cetera.
>
> The President Pro Tempore. I see. That would mean also changing the subtitle of Section 4. Will it no longer be child prostitution?
>
> Senator Angara. No, no. Not necessarily, Mr. President, because we are still talking of the child who is being misused for sexual purposes either for money or for consideration. What I am trying to cover is the other consideration. Because, here, it **is limited only to the child being abused or misused for sexual purposes, only for money or profit**.
>
> I am contending, Mr. President, that **there may be situations where the child may not have been used for profit** or...
>
> The President Pro Tempore. So, it is no longer prostitution. Because the essence of prostitution is profit.

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[24] *Malto v. People*, 560 Phil. 119 (2007).

[25] *Supra* note 23, at 998-999.

Senator Angara. Well, the Gentleman is right. **Maybe the heading ought to be expanded**. But, still, the President will agree that that is a form or manner of child abuse.

The President Pro Tempore. What does the Sponsor say? Will the Gentleman kindly restate the amendment?

ANGARA AMENDMENT

Senator Angara. The new section will read something like this, Mr. President: MINORS, WHETHER MALE OR FEMALE, WHO FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP INDULGE IN SEXUAL INTERCOURSE, et cetera.

Senator Lina. It is accepted, Mr. President.

The President Pro Tempore. Is there any objection? [Silence] Hearing none, the amendment is approved.

How about the title, 'Child Prostitution,' shall we change that too?

Senator Angara. **Yes, Mr. President, to cover the expanded scope**.

The President Pro Tempore. Is that not what we would call probable 'child abuse'?

Senator Angara. Yes, Mr. President.

The President Pro Tempore. Subject to rewording. Is there any objection? [Silence] Hearing none, the amendment is approved.

Clear from the records of the deliberation is that the original wording of Sec. 5 of RA 7610 has been expanded so as to cover abuses that are not characterized by gain, monetary or otherwise. In the case at bar, the abuse suffered by AAA squarely falls under this expanded scope as there was no allegation of consideration or profit in exchange for sexual favor. As stated in the Information, petitioner committed lascivious conduct through the use of *"force"* and *"intimidation."*

iii. "Force and intimidation" is subsumed under "coercion and influence"

The term *"coercion and influence"* as appearing in the law is broad enough to cover *"force and intimidation"* as used in the Information. To be sure, Black's Law Dictionary defines *"coercion"* as *"compulsion; force; duress"*[26] while "[undue] *influence"* is defined as *"persuasion carried to the point of overpowering the will."*[27] On the other hand, *"force"* refers to *"constraining power, compulsion; strength directed to an end"*[28] while jurisprudence defines *"intimidation"* as "*unlawful coercion; extortion; duress; putting in fear.*"[29] As can be gleaned, the terms are used almost synonymously. It is then of no moment that the terminologies employed by RA 7610 and by the Information are different. And to dispel any remaining lingering doubt as to their interchangeability, the Court enunciated in *Caballo v. People*[30] that:

> x x x sexual intercourse or lascivious conduct under the **coercion or influence of any adult exists when there is some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will**. Corollary thereto, Section 2(g) of the Rules on Child Abuse Cases conveys that sexual abuse involves the element of influence which manifests in a variety of forms. It is defined as:
>
> The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children.

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[26] <http://thelawdictionary.org/coercion/> last accessed on March 3, 2017.

[27] <http://thelawdictionary.org/undue-influence/> last accessed on March 3, 2017.

[28] <http://thelawdictionary.org/force/> last accessed on March 4, 2017.

[29] *Sazon v. Sandiganbayan*, 598 Phil. 35 (2009).

[30] 710 Phil. 792, 805-806 (2013).

To note, the term **"influence" means the "improper use of power or trust in any way that deprives a person of free will and substitutes another's objective.**" Meanwhile**, "coercion" is the "improper use of x x x power to compel another to submit to the wishes of one who wields it**." (emphasis added)

With the foregoing, the Court need not burden itself with nitpicking and splitting hairs by making a distinction between these similar, if not identical, words employed, and make a mountain out of a mole hill.

It is not necessary that the description of the crime, as worded in the penal provision allegedly violated, be reproduced *verbatim* in the accusatory portion of the Information before the accused can be convicted thereunder. Sec. 9, Rule 110 of the Rules of Court is relevant on this point:

Section 9. *Cause of the accusation.* — **The acts or omissions complained of as constituting the offense** and the qualifying and aggravating circumstances **must be stated in ordinary and concise language and not necessarily in the language used in the statute** but in **terms sufficient to enable a person of common understanding to know what offense is being charged** as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

The Court has held in a catena of cases[31] that the rule is satisfied when the crime *"is described in intelligible terms with such particularity as to apprise the accused, with reasonable certainty, of the offense charged."* Furthermore, ***"[t]he use of derivatives or synonyms or allegations of basic facts constituting the offense charged is sufficient."*** Hence, the exact phrase "*exploited in prostitution or subjected to other abuse"* need not be mentioned in the Information. Even the words *"coercion or influence"* need not specifically appear.

Thus, the Court, in *Olivarez v. Court of Appeals*,[32] has similarly sustained the conviction of therein petitioner Isidro Olivarez

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[31] *Lazarte, Jr. v. Sandiganbayan*, 600 Phil. 475 (2009); *Serapio v. Sandiganbayan (Third Division),* 444 Phil. 499, 522 (2003).

[32] *Supra* note 12.

(Olivarez) for violating Sec. 5, RA 7610. The Information indicting Olivarez of the offense read:

> The undersigned 4th Assistant Provincial Prosecution (*sic*) of Laguna upon a sworn complaint filed by the private complainant, [AAA], hereby accuses ISIDRO OLIVAREZ of the crime of VIOLATION OF RA 7610, committed as follows:
>
> > That on or about July 20, 1997, in the Municipality of San Pedro, Province of Laguna, within the jurisdiction of this Honorable Court, said accused actuated by lewd design did then and there wilfully, unlawfully and feloniously by means of **force and intimidation** commit acts of lasciviousness on the person of one [AAA], by touching her breasts and kissing her lips, against her will, to her damage and prejudice.
>
> CONTRARY TO LAW. (emphasis added)

Conspicuously enough, the Information in *Olivarez* is couched in a similar fashion as the Information in the extant case. The absence of the phrase *"exploited in prostitution or subject to other sexual abuse"* or even the specific mention of "*coercion*" or "*influence*" was never a bar for the Court to uphold the finding of guilt against an accused for violation of RA 7610. Just as the Court held that it was enough for the Information in *Olivarez* to have alleged that the offense was committed by means of *"force and intimidation,"* the Court must also rule that the Information in the case at bench does not suffer from the alleged infirmity.

So too did the Court find no impediment in *People v. Abadies*,[33] *Malto v. People*,[34] *People v.*

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[33] 433 Phil. 814, 818 (2002); the Information reads:

> That on or about July 1, 1997, in the Municipality of San Pedro, Province of Laguna, Philippines, and within the jurisdiction of this Honorable Court, said accused actuated by lewd design did then and there wilfully, unlawfully and feloniously, **with force and intimidation** commit acts of lasciviousness upon the person of his 17-year old daughter[AAA] by kissing, mashing her breast and touching her private parts against her will and consent.
>
> CONTRARY TO LAW.

[34] *Supra* note 24, at 126; the Information reads:

Ching,[35] *People v. Bonaagua*,[36] and *Caballo v. People*[37] to convict the accused therein for violation of Sec. 5, RA 7610

The undersigned Assistant City Prosecutor accuses MICHAEL JOHN Z. MALTO of VIOLATION OF SECTION 5(b), ARTICLE III, REPUBLIC ACT 7610, AS AMENDED, committed as follows:

That on or about and sometime during the month of November 1997 up to 1998, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Michael John. Z. Malto, a professor, did then and there willfully, unlawfully and feloniously **induce and/or seduce** his student at Assumption College, complainant, AAA, a minor of 17 years old, to indulge in sexual intercourse for several times with him as in fact said accused had carnal knowledge.

Contrary to law.

[35] 563 Phil. 433, 436(2007); the Information reads:

CRIMINAL CASE NO. Q-99-87053

That in or about the month of May, 1998, in XXX, Philippines, the said accused by means of **force and intimidation,** to wit: by then and there, willfully, unlawfully and feloniously drag said AAA, his own daughter, 12 years of age, minor, inside a bedroom and undressed her and put himself on top of her and thereafter have carnal knowledge with said AAA against her will and without her consent.

[36] 665 Phil. 750, 755-756 (2011); the information reads:

That on or about the month of December 1998 in the City of Las Piñas and within the jurisdiction of this Honorable Court, the above-named accused, with abuse of influence and moral ascendancy, **by means of force, threat and intimidation**, did then and there willfully, unlawfully and feloniously insert his tongue and finger into the genital of his daughter, [AAA], a minor then eight (8) years of age, against her will and consent.

CONTRARY TO LAW and with the special aggravating/qualifying circumstance of minority of the private offended party, [AAA], being then only eight (8) years of age and relationship of the said private offended party with the accused, Ireno Bonaagua y Berce, the latter being the biological father of the former.

[37] *Supra* note 30, at 796-797; the Information reads:

That undersigned Second Assistant City Prosecutor hereby accuses Christian Caballo of the crime of Violation of Section 10 (a) of Republic Act No. 7610, committed as follows:

That in or about the last week of March 1998, and on different dates subsequent thereto, until June 1998, in the City of Surigao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a 23-year-old man, in utter disregard of the prohibition of the provisions of Republic Act No. 7610 and taking advantage of the innocence and lack of worldly experience of AAA who was only 17 years old at that time, having been born on November

notwithstanding the non-mention in the Information of *"coercion," "influence,"* or *"exploited in prostitution or subject to other abuse."*

The offense charged can also be elucidated by consulting the designation of the offense as appearing in the Information. The designation of the offense is a critical element required under Sec. 6, Rule 110 of the Rules of Court for it assists in apprising the accused of the offense being charged. Its inclusion in the Information is imperative to avoid surprise on the accused and to afford him of the opportunity to prepare his defense accordingly.[38] Its import is underscored in this case where the preamble states that the crime charged is of *"Acts of Lasciviousness in relation to Section 5(b) of R.A. No. 7610."*

In *Malto v. People*,[39] therein accused Michael John Z. Malto (Malto) was charged for violation of RA 7610 in the following wise:

The undersigned Assistant City Prosecutor accuses MICHAEL JOHN Z. MALTO of **VIOLATION OF SECTION 5[b], ARTICLE III, REPUBLIC ACT 7610**, AS AMENDED, committed as follows:

That on or about and sometime during the month of November 1997 up to 1998, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Michael John. Z. Malto, a professor, did then and there willfully, unlawfully and feloniously **take advantage and exert influence**, relationship and moral ascendancy and induce and/or seduce his student at Assumption College, complainant, AAA, a minor of 17 years old,

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3, 1980, did then and there willfully, unlawfully and feloniously commit sexual abuse upon said AAA**, by persuading and inducing** the latter to have sexual intercourse with him, which ultimately resulted to her untimely pregnancy and delivery of a baby on March 8, 1999, a condition prejudicial to her development, to the damage and prejudice of AAA in such amount as may be allowed by law.

CONTRARY TO LAW.

[38] *Malto v. People*, *supra* note 24.

[39] *Id.* at 126.

to indulge in sexual intercourse and lascivious conduct for several times with him as in fact said accused has carnal knowledge.

Contrary to law. (emphasis and words in brackets added)

Interestingly, the acts constitutive of the offense, as alleged in the Information, could make out a case for violation of either Sec. 5(b) of RA 7610 or Rape under the RPC.[40] Nevertheless, the Court affirmed the finding that Malto is criminally liable for violation of RA 7610, and not for Rape.

The Court is not unmindful of its pronouncements in *People v. Abello (Abello)*[41] and *Cabila v. People (Cabila)*[42] that the second element must specifically be alleged in the Information and thereafter proved. However, these rulings cannot support petitioner's prayer that he be convicted under Art. 336 of the RPC instead of under Sec. 5(b) of RA 7610.

To begin with, the factual milieu of *Abello* significantly differs with that in the case at bar. Our refusal to convict therein accused Heracleo Abello was premised on the the fact that his victim cannot be considered as a *"child"* within the purview of RA 7610.[43] The victim in *Abello*, was 21 years of age when the offense was committed. Although she had polio, the prosecution failed to substantiate through evidence that the victim's physical condition rendered her incapable of fully taking care of herself or of protecting herself against sexual abuse.[44] Hence, Abello was only convicted of Acts of Lasciviousness under Art. 336 of the RPC.

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[40] Rape was still classified as a crime against chastity under the RPC at the time the offense was committed.

[41] 601 Phil. 373(2009).

[42] *Supra* note 19.

[43] **Section 3.** ***Definition of Terms.*** – (a) "Children" refers to person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition;

[44] *Supra* note 41.

Cabila, on the other hand, is a stray division case that has seemingly been overturned by the Court's recent *en banc* ruling in *Dimakuta v. People (Dimakuta)*.[45] The latter case attempted to punctuate the discussion on the issue at hand, but fell short as the conviction therein for violation of Art. 336 of the RPC had already attained finality. Instead, what the Court *en banc* was confronted with in *Dimakuta*, the bone of contention that remained, was whether or not an accused is disqualified to apply for probation even if such appeal resulted in the reduction of the non-probationable penalty imposed to a probationable one. The Court, therefore, deems it more appropriate *here* to categorically abandon our ruling in *Cabila*.

Neither can petitioner buttress his claim by citing the dissent in the 2005 case of *Olivarez v. CA*[46] wherein it was expounded thus:

> The first element refers to the acts of lasciviousness that the accused performs on the child. The second element refers to the special circumstance that the child (is) exploited in prostitution or subjected to other sexual abuse. This special circumstance already exists when the accused performs acts of lasciviousness on the child. In short, the acts of lasciviousness that the accused performs on the child are separate and different from the child's exploitation in prostitution or subjection to "**other sexual abuse**."
>
> Under Article 336 of the RPC, the accused performs the acts of lasciviousness on a child who is neither exploited in prostitution nor subjected to "**other sexual abuse**." In contrast, under Section 5 of RA 7610, the accused performs the acts of lasciviousness on a child who is either exploited in prostitution or subjected to "**other sexual abuse**."
>
> Section 5 of RA 7610 deals with a situation where the acts of lasciviousness are committed on a child already either exploited in prostitution or subjected to "**other sexual abuse**." Clearly, the acts of lasciviousness committed on the child are separate and distinct from the **other** circumstance that the child is either exploited in prostitution or subjected to "**other sexual abuse**." (emphasis supplied)

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[45] G.R. No. 206513, October 20, 2015, 773 SCRA 228.

[46] *Supra* note 12, at 444-445.

Contrary to the exposition, the very definition of *"child abuse"* under Sec. 3(b) of RA 7610 does not require that the victim suffer a separate and distinct act of sexual abuse aside from the act complained of. For it refers to the maltreatment, whether habitual or not, of the child. Thus, a violation of Sec. 5(b) of RA 7610 occurs even though the accused committed sexual abuse against the child victim only once, even without a prior sexual affront.

iv. There need not be a third person subjecting the exploited child to other abuse

The intervention by a third person is not necessary to convict an accused under Sec. 5 of RA 7610. As regards paragraph (a), a child may engage in sexual intercourse or lascivious conduct regardless of whether or not a *"bugaw"* is present. Although the presence of an offeror or a pimp is the typical set up in prostitution rings, this does not foreclose the possibility of a child voluntarily submitting himself or herself to another's lewd design for consideration, monetary or otherwise, without third person intervention. Needless to say, the child, would still be under the protection of the law, and the offender, in such a situation, could still be held criminally liable for violation of Sec. 5(a) of RA 7610.

The Senate deliberations made clear, though, that other forms of sexual abuse, not just prostitution, are within the extended coverage of RA 7610. The offense is even penalized under the same provision as prostitution—Sec. 5 of the law. Both offenses must then be dealt with under the same parameters, in spite of the differences in their elements. Thus, concomitant with the earlier postulation, just as the participation of a third person is not necessary to commit the crime of prostitution, so too is the circumstance unessential in charging one for other sexual abuse.

It is immaterial whether or not the accused himself employed the coercion or influence to subdue the will of the child for the latter to submit to his sexual advances for him to be convicted under paragraph (b). Sec. 5 of RA 7610 even provides that the

offense can be committed by *"**any adult**, syndicate or group,"* without qualification.[47] The clear language of the special law, therefore, does not preclude the prosecution of lascivious conduct performed by the same person who subdued the child through coercion or influence. This is, in fact, the more common scenario of abuse that reaches this Court and it would be an embarrassment for us to rule that such instances are outside the ambit of Sec. 5(b) of RA 7610.

It is as my esteemed colleagues Associate Justices Diosdado M. Peralta and Estela M. Perlas-Bernabe reminded the Court. *Ratio legis est anima***.** The reason of the law is the soul of the law. In this case, the law would have miserably failed in fulfilling its lofty purpose[48] of providing special protection to children **from all forms of abuse** if the Court were to interpret its penal provisions so as to require the additional element of a prior or contemporaneous abuse that is different from what is complained of, and if the Court were to require that a third person act in concert with the accused.

The RTC and CA did not err in finding petitioner guilty beyond reasonable doubt

Well-settled is the rule that, absent any clear showing of abuse, arbitrariness or capriciousness committed by the lower court, its

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[47] **Section 5.** ***Child Prostitution and Other Sexual Abuse*****.** – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

[48] **RA 7610, Section 2.** ***Declaration of State Policy and Principles*****.** – It is hereby declared to be the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty exploitation and discrimination and other conditions, prejudicial to their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.

findings of facts, especially when affirmed by the Court of Appeals, are binding and conclusive upon this Court.[49] This is so because the observance of the deportment and demeanor of witnesses are within the exclusive domain of the trial courts. Thus, considering their unique vantage point, trial courts are in the best position to assess and evaluate the credibility and truthfulness of witnesses and their testimonies.[50]

In the case at bar, the RTC held that the prosecution duly established petitioner's guilt beyond reasonable doubt through AAA's straightforward testimony. The trial court observed that when AAA testified, she was able to steadily recount Quimvel's immodest acts, as follows:

Q Okay. On the same date, where was your mother, if you know?
A During that time, my mother was in Batangas, she being a household helper.
Q Alright. How about your father, where was he on July 18, 2007, at more or less 8:00 o'clock in the evening?
A He was on duty at Palapas, Ligao City.
Q Okay. What was your father's job?
A He was on duty, since he was a Barangay Tanod.
Q Okay. Now, on that date and time, where were you, if you recall?
A I was in our house.
Q Who were with you inside your house?
A I was with my two (2) siblings.
Q Okay. Now, what happened while you and your siblings were there inside your house on that date and time?
A Eduardo went to our house with a viand vegetable for us.
Q Okay. Who is this Eduardo that you are referring to?
A He is the helper of my grandfather.
Q Okay. If you know, why was he bringing you then a viand?
A He was sent by our Lolo to bring the viand for us.
Q Alright. When he brought the viand to you, what did you say, if any?
A I told him to accompany us in our house because we are afraid.

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[49] *Uyboco v. People*, G.R. No. 211703, December 10, 2014, 744 SCRA 688.
[50] *People v. Pareja*, 724 Phil. 759 (2014).

Q Okay. What did he say, if any, when you told him that?
A He told me, it's alright.
Q Okay. So, what did you do after he told you that?
A After that, I went to sleep.
Q How about your brother or sister, what did they do also?
A They too went to sleep.
Q And then what happened, if you recall?
A Since his leg was placed over my body. I was awaken[ed] because from that, he was also inserting his hand inside my panty.
Q Alright. Now, could you tell us which leg was it that he placed on top of your body?
A His right leg(,) ma'am.
Q Okay. Now, you've mentioned that he inserted his hand inside your panty, do you recall what you were wearing at that time?
A I was wearing shorts and panty.
Q Alright. How about on the upper portion of your body, what were you wearing then?
A I was wearing a blouse, like what I am wearing now. (Witness pointing to her blouse)
Q Alright. And you mentioned that he inserted his hand on your panty, which hand did he use?
A His right hand.
Q Alright. And after inserting his hand inside your panty, what did he do with it?
A After inserting his hand inside my panty, he rubbed my vagina. (Witness is demonstrating by rubbing her left hand with her right hand.)
Q Now, could you tell us for how long did Eduardo rubbed or caressed your vagina? (sic)
A Maybe it took for about five (5) minutes.
Q Do you know how long is a minute?
A I do not know(,) ma'am.
Q Now, if you are going to count one (1) to ten (10), each count would be equivalent to one (1) second and if you have counted for ten (10), on what number would you reach to approximate the time wherein Eduardo caressed your vagina?
A It could be thirty (30) minutes.

COURT

Maybe she did not understand it.

PROS. CRUZ

Q Alright. Now, he (sic) took a long time for the accused to caress your vagina, is that what you are trying to tell this Honorable Court?

A Yes(,) ma'am.

Q And what did you do when he was caressing your vagina for that long?

A I removed his hand from inside my panty.[51]

The foregoing testimonial account demonstrates that all the elements of the crime of Acts of Lasciviousness under Sec. 5(b) of RA 7610, as earlier enumerated, are present.

Let us not forget the circumstances of this case, not only was the offense committed against a child under twelve (12) years of age, it was committed when the victim was unconscious, fast asleep in the dead of the night. AAA, then a minor of seven (7) years, was awoken by the weight of petitioner's leg on top of her and of his hand sliding inside her undergarment. His hand proceeded to caress her womanhood, which harrowing experience of a traumatic torment only came to a halt when she managed to prevent his hand from further touching her private parts.

As regards the second additional element, it is settled that the child is deemed subjected to other sexual abuse when the child engages in lascivious conduct under the coercion or influence of any adult.[52] Intimidation need not necessarily be irresistible. It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party.[53] The law does not require physical violence on the person of the victim; moral coercion or ascendancy is sufficient.[54]

The petitioner's proposition––that there is not even an iota of proof of force or intimidation as AAA was asleep when the offense was committed and, hence, he cannot be prosecuted

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[51] TSN, June 23, 2011, pp. 6-9.

[52] *Garingarao v. People*, 669 Phil. 512 (2011).

[53] *Caballo v. People*, *supra* note 30.

[54] *Dimakuta v. People*, *supra* note 45.

under RA 7610––is bereft of merit. When the victim of the crime is a child under twelve (12) years old, mere moral ascendancy will suffice.

Here, AAA was a child at the tender age of seven (7) when the offense was committed. She was residing with her father in Palagas, Ligao City, Albay while her mother works as a household helper in Batangas. Her father, however, is out of the house most of the time, working two jobs as a vendor and *barangay tanod*. Petitioner, on the other hand, was known to the victim and her siblings as the caretaker of their grandmother's ducks. Thus, when petitioner brought some vegetable viand to the victim's house at the day the crime was committed, he was requested by the children to stay with them because they were afraid. AAA entrusted to petitioner her safety and that of her siblings, only to be betrayed. In this situation, the Court finds that because of the relative seniority of petitioner and the trust reposed in him, petitioner abused the full reliance of AAA and misused his ascendancy over the victim. These circumstances can be equated with "intimidation" or "influence" exerted by an adult, covered by Sec. 5(b) of RA 7610. Ergo, the element of being subjected to sexual abuse is met.

That AAA is a child of tender years does not detract from the weight and credibility of her testimony. On the contrary, even more credence is given to witnesses who were able to candidly relay their testimony before the trial courts under such circumstance. The child's willingness to undergo the trouble and humiliation of a public trial is an eloquent testament to the truth of her complaint.[55]

In stark contrast, Quimvel's defense––that he did not go to AAA's house on the alleged time of the incident as he was busy watching over the ducks of AAA's grandmother at the latter's house[56]––deserves scant consideration. Jurisprudence is replete of cases holding that denial and alibi are weak defenses,

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[55] *Navarrete v. People*, G.R. No. 147913, January 31, 2007, 513 SCRA 509.

[56] *Rollo*, p. 67.

which cannot prevail against positive identification.[57] A categorical and consistent positive identification which is not accompanied by ill motive on the part of the eyewitness prevails over mere denial. Such denial, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. It cannot be given a greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.[58]

For his alibi to prosper, it was incumbent upon petitioner to prove that he was somewhere else when the offense was committed, and that he was so far away it would have been impossible for him to be physically present at the place of the crime or at its immediate vicinity at the time of the commission.[59] But in his version of the events, petitioner failed to prove the element of physical impossibility since the house of AAA's grandmother, where he claimed to be at that time, is only 150 meters, more or less, from AAA's house. His alibi, therefore, cannot be considered exculpatory.

Article 336 of the RPC was never repealed by RA 8353

Associate Justice Marvic M.V.F. Leonen (Justice Leonen) posits that Art. 336 of the RPC has allegedly been rendered incomplete and ineffective by RA 8353, otherwise known as the Anti-Rape law. The good justice brings our attention to Sec. 4[60] of the special law, which clause expressly repealed Art. 335 of the RPC. And since the second element of Acts of Lasciviousness under Art. 336 of the RPC is sourced from Art.

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[57] *People v. Agcanas*, G.R. No. 174476, October 11, 2011, 658 SCRA 842.

[58] *People v. Gani*, G.R. No. 195523, June 5, 2013, 697 SCRA 530.

[59] *People v. Piosang*, G.R. No. 200329, June 5, 2013, 697 SCRA 587.

[60] **Section 4. *Repealing Clause*.** - Article 335 of Act No. 3815, as amended, and all laws, acts, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of this Act are deemed amended, modified or repealed accordingly.

335 of the same code,[61] it is then Justice Leonen's theory that Acts of Lasciviousness ceased to be a crime under the RPC following Art. 335's express repeal.

We respectfully disagree.

Sec. 4 of RA 8353 did not expressly repeal Article 336 of the RPC for if it were the intent of Congress, it would have expressly done so. Rather, the phrase in Sec. 4 states: "*deemed amended, modified, or repealed accordingly*" qualifies "*Article 335 of Act No. 3815, as amended, and all laws, acts, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of [RA 8353].*"

As can be read, repeal is not the only fate that may befall statutory provisions that are inconsistent with RA 8353. It may be that mere amendment or modification would suffice to reconcile the inconsistencies resulting from the latter law's enactment. In this case, Art. 335 of the RPC,[62] which previously penalized rape through carnal knowledge, has been replaced by Art. 266-A.[63] Thus, the reference by Art. 336 of the RPC to any of the circumstances mentioned on the erstwhile preceding article on how the crime is perpetrated should now refer to the

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[61] Under Art. 336, the lascivious conduct must be performed under any of the circumstances mentioned on its *"preceding article,"* referring to the previous law penalizing rape. Prior to its repeal, Art. 335 of the RPC provides that rape may be committed a) by using force or intimidation; b) when the offended party is deprived of reason or otherwise unconscious; or c) when the offended party is under 12 years of age.

[62] **Article 335.** *When and how rape is committed.* - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and

3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

[63] Article 266-A. Rape: *When And How Committed.* - Rape is committed:

circumstances covered by Art. 266-A as introduced by the Anti-Rape Law.

We are inclined to abide by the Court's long-standing policy to disfavor repeals by implication for laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject. The failure to particularly mention the law allegedly repealed indicates that the intent was not to repeal the said law, unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and old laws.[64] Here, RA 8353 made no specific mention of any RPC provision other than Art. 335 as having been amended, modified, or repealed. And as demonstrated, the Anti-Rape Law, on the one hand, and Art. 336 of the RPC, on the other, are not irreconcilable. The only construction that can be given to the phrase *"preceding article"* is that Art. 336 of the RPC now refers to Art. 266-A in the place of the repealed Art. 335. It is, therefore, erroneous to claim that Acts of Lasciviousness can no longer be prosecuted under the RPC.

It is likewise incorrect to claim that Art. 336 had been rendered inoperative by the Anti-Rape Law and argue in the same breath the applicability of Sec. 5(b) of RA 7610. The latter provision reads:

Section 5. ***Child Prostitution and Other Sexual Abuse.*** – x x x

x x x x x x x x x

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1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. (as amended by RA 8353, Sec. 2)

[64] *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, June 22, 2010, 621 SCRA 461.

(b) **Those who commit** the act of sexual intercourse or **lascivious conduct with a child** exploited in prostitution or subject to other sexual abuse; Provided, That when the [victim] is **under twelve (12) years of age**, the perpetrators **shall be prosecuted under** Article 335, paragraph 3, for rape and **Article 336 of** Act No. 3815, as amended, **the Revised Penal Code**, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; x x x (emphasis added)

If Art. 336 then ceased to be a penal provision in view of its alleged incompleteness, then so too would Sec. 5(b) of RA 7610 be ineffective since it defines and punishes the prohibited act by way of reference to the RPC provision.

The decriminalization of Acts of Lasciviousness under the RPC, as per Justice Leonen's theory, would not sufficiently be supplanted by RA 7610 and RA 9262,[65] otherwise known as the Anti-Violence Against Women and their Children Law (Anti-VAWC Law). Under RA 7610, only minors can be considered victims of the enumerated forms of abuses therein. Meanwhile, the Anti-VAWC law limits the victims of sexual abuses covered by the RA to a wife, former wife, or any women with whom the offender has had a dating or sexual relationship, or against her child.[66] Clearly, these laws do not provide ample protection against sexual offenders who do not discriminate in selecting their victims. One does not have to be a child before he or she can be victimized by acts of lasciviousness. Nor does one have to be a woman with an existing or prior relationship with the offender to fall prey. Anyone can be a victim of another's lewd design. And if the Court will subscribe to Justice Leonen's position, it will render a large portion of our demographics

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[65] AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES.

[66] RA 9262, Sec. 3(a).

(*i.e.* adult females who had no prior relationship to the offender, and adult males) vulnerable to sexual abuses.

The RTC and the CA imposed the proper prison term

Anent the proper penalty to be imposed, Sec. 5 of RA 7610 provides that the penalty for lascivious conduct, when the victim is under twelve (12) years of age, shall be *reclusion temporal* in its medium period, which ranges from 14 years, 8 months and 1 day to 17 years and 4 months.[67]

Meanwhile, Sec. 1 of Act No. 4103,[68] otherwise known as the Indeterminate Sentence Law (ISL), provides that if the offense is ostensibly punished under a special law, the minimum and maximum prison term of the indeterminate sentence shall not be beyond what the special law prescribed.[69] Be that as it may, the Court had clarified in the landmark ruling of *People v. Simon*[70] that the situation is different where although the offense is defined in a special law, the penalty therefor is taken from the technical nomenclature in the RPC. Under such circumstance, the legal effects under the system of penalties native to the Code would also necessarily apply to the special law.

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[67] REVISED PENAL CODE, Art. 76.

[68] AN ACT TO PROVIDE FOR AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES.

[69] 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.** (emphasis added)

[70] G.R. No. 93028, July 29, 1994, 234 SCRA 555.

Thus, in *People v. Santos (Santos)*,[71] which similarly involved charges for Acts of Lasciviousness under Sec. 5(b) of RA 7610, the Court applied the ISL and adjusted the prison term meted to the accused-appellant therein. In the absence of mitigating or aggravating circumstances, the Court held that the maximum term of the sentence to be imposed shall be taken from the medium period of *reclusion temporal* in its medium period, which ranges from fifteen (15) years, six (6) months and twenty-one (21) days to sixteen (16) years, five (5) months and nine (9) days. On the other hand the minimum term shall be taken from the penalty next lower to *reclusion temporal* medium, that is *reclusion temporal* minimum, which ranges from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.

From the foregoing, it becomes clear that the prison term meted to petitioner (*i.e.* fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* in its medium period as minimum to fifteen (15) years, six (6) months and nineteen (19) days of *reclusion temporal* in its medium period) must be modified to be in consonance with the Court's ruling in *Santos*. Accordingly, the minimum prison term shall be reduced to twelve (12) years and one (1) day, while the maximum term shall be adjusted to fifteen (15) years, six (6) months and twenty-one (21) days.

WHEREFORE, the instant petition is hereby **DENIED**. The Court of Appeals Decision in CA-G.R. CR No. 35509 finding petitioner Eduardo Quimvel *y* Braga also known as Eduardo/Edward Quimuel *y* Braga guilty beyond reasonable doubt of acts of lasciviousness is hereby **AFFIRMED** with **MODIFICATION** as follows:

WHEREFORE, the Decision dated 23 January 2013 of the Regional Trial Court, Fifth Judicial Region, Ligao City Branch 11, in Criminal Case No. 5530, is hereby MODIFIED in that accused-appellant EDUARDO QUIMVEL y BRAGA also known as EDUARDO/ EDWARD QUIMUEL y BRAGA is SENTENCED

[71] G.R. No. 205308, February 11, 2015, 750 SCRA 471.

to suffer the indeterminate imprisonment of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period as minimum to fifteen (15) years, six (6) months, and twenty-one(21) days of reclusion temporal in its medium period as maximum. He is further ORDERED to pay the victim, AAA, moral damages, exemplary damages and fine in the amount of ₱15,000.00 each as well as ₱20,000.00 as civil indemnity. All damages shall earn interest at the rate of six percent (6%) per annum from the date of finality of this judgment.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Bersamin, Mendoza, Reyes, Martires, and *Tijam, JJ.,* concur.

Peralta and *Perlas-Bernabe, JJ.,* see separate concurring opinions.

Leonen, J., see separate opinion.

Carpio and *Caguioa, JJ.,* see dissenting opinions.

Del Castillo, J., joins the dissenting opinion of *J.* Carpio and *J.*, Caguioa.

Jardeleza, J., no part.

SEPARATE CONCURRING OPINION

PERALTA, *J.*:

I agree with the *ponencia* in affirming the conviction of petitioner Eduardo Quimvel *y* Braga for Acts of Lasciviousness under Article 336 of the Revised Penal Code (*RPC*), in relation to Section 5(b),[1] Article III of Republic

[1] Section 5. *Child Prostitution and Other Sexual Abuse*. – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x x x x x x

Act (*R.A.*) No. 7610,[2] and I have decided to expound more on the applicable laws and imposable penalties for acts of lasciviousness committed against minors, as reference for future legislation and for guidance and information purposes.

Eduardo Quimvel *y* Braga was charged with the crime of acts of lasciviousness in an Information, which reads:

That on or about 8 o'clock in the evening of July 18, 2007 at Palpas, Ligao City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, through force and intimidation, did then and there, willfully, unlawfully and feloniously, insert his hand inside the panty of AAA, a minor of 7 years old and mash her vagina, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.

The Regional Trial Court (*RTC*) of Ligao City, Albay, Branch 11, found Quimvel guilty beyond reasonable doubt of the crime of Acts of Lasciviousness in relation to Section 5(b), Article III of R.A. 7610.[3] The dispositive portion of the RTC decision reads:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered:

1. Finding the accused, EDUARDO QUIMVEL Y BRAGA a.k.a. EDWARD/EDUARDO QUIMVEL Y BRAGA, GUILTY beyond

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(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; and

x x x x x x x x x

[2] *An Act Providing For Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and For Other Purposes.*

[3] Decision dated January 23, 2013; penned by Judge Amy Ana L. De Villa-Rosero.

reasonable doubt of the crime of Acts of Lasciviousness in relation to Section 5 (b), Article III of R.A. 7610 and hereby sentenced him to suffer the penalty of imprisonment from FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) day of Reclusion Temporal in its medium period as minimum to FIFTEEN (15) YEARS, SIX (6) MONTHS and NINETEEN (19) DAYS of Reclusion Temporal in its medium period as maximum; and

2. ORDERING the accused, EDUARDO QUIMVEL Y BRAGA a.k.a. EDWARD/EDUARDO QUIMVEL Y BRAGA shall be credited with the period of his preventive detention pursuant to Article 29 of the Revised Penal Code.

No costs.

SO ORDERED.

On appeal, the Court of Appeals (*CA*) affirmed the RTC Decision with modification as to the damages, civil indemnity and interest thereon,[4] to wit:

WHEREFORE, the Decision dated 23 January 2013 of the Regional Trial Court, Fifth Judicial Region, Ligao City Branch 11, in Criminal Case No. 5530, is hereby MODIFIED in that the accused-appellant EDUARDO QUIMVEL y BRAGA also known as EDUARDO/EDWARD QUIMVEL y BRAGA is ORDERED TO PAY THE VICTIM, AAA moral damages, exemplary damages and fine in the amount of ₱15,000.00 each as well as ₱20,000.00 as civil indemnity. All damages shall earn interest at the rate of six percent (6%) per annum from the date of finality of judgment.

SO ORDERED.

Hence, the present petition for review on *certiorari* under Rule 45, raising the following issues:

I.

The CA erred in affirming the decisions of the trial court as the prosecution was not able to prove that he is guilty of the crime charged beyond reasonable doubt.

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[4] Decision dated May 29, 2014; penned by Associate Justice Japar B. Dimaampao, with Associate Justices Elihu A. Ybañez and Carmelita S. Manahan, concurring.

II.

Assuming without admitting that he is guilty hereof, he may be convicted only of Acts of Lasciviousness under Art. 336 of the Revised Penal Code (RPC) and not in relation to Section 5 of R.A. 7610.

I concur with the *ponencia* in affirming the CA's decision finding Quimvel guilty beyond reasonable doubt of the crime of violation of Section 5(b), Article III of R.A. 7610.

Acts of lasciviousness under Article 336 of the RPC, together with child prostitution and rape, is dealt with under Section 5(b) of Article III of R.A. 7610 which reads:

ARTICLE III
Child Prostitution and Other Sexual Abuse

SECTION 5. *Child Prostitution and Other Sexual Abuse.* — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

(1) Acting as a procurer of a child prostitute;
(2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;
(3) Taking advantage of influence or relationship to procure a child as prostitute;
(4) Threatening or using violence towards a child to engage him as a prostitute; or
(5) Giving monetary consideration, goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; *Provided*, That when the victim is under twelve (12)

years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided,* That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; and

(c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.[5]

In a charge for **acts of lasciviousness under Article 336 of the RPC** in relation to R.A. 7610, there is no need to allege that the lascivious conduct was committed with a "child exploited in prostitution or subject to other sexual abuse." Such allegation is pertinent only when the charge is for **child prostitution** or **violation of the first clause of Section 5(b), Article III of R.A. 7610** against "*those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse,*" *i.e.*, the customer or patron.

Violation of the first clause of Section 5(b), Article III of R.A. 7610 is separate and distinct from acts of lasciviousness under Article 336 of the RPC. Aside from being dissimilar in the sense that the former is an offense under special law, while the latter is a felony under the RPC, they also have different elements. On the one hand, the elements of violation of the first clause of Section 5(b) are: (1) accused commits the act of sexual intercourse or lascivious conduct; (2) the act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age. On the other hand, the elements of acts of lasciviousness under Article 336 are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done under any of the following circumstances: (a) by using

[5] Emphasis added.

force or intimidation; or (b) when the offended party is deprived of reason or otherwise unconscious; or (c) When the offended party is under 12 years of age; and (3) that the offended party is another person of either sex. Thus, the allegation that the child be "*exploited under prostitution or subjected to other sexual abuse*," need not be alleged in the information for acts of lasciviousness simply because it is not one of the elements of such crime as defined by Article 336 of the RPC.

Moreover, while the first clause of Section 5(b), Article III of R.A. 7610 is silent with respect to the age of the victim, Section 3, Article I thereof defines "children" as those below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability. Notably, two provisos succeeding the first clause of Section 5(b) explicitly state a qualification that **when the victims of lascivious conduct is under 12 years of age, the perpetrator shall be (1) prosecuted under Article 336 of the RPC, and (2) the penalty shall be *reclusion temporal* in its medium period**. It is a basic rule in statutory construction that the office of the proviso qualifies or modifies only the phrase immediately preceding it or restrains of limits the generality of the clause that it immediately follows. A proviso is to be construed with reference to the immediately preceding part of the provisions, to which it is attached, and not to the statute itself or the other sections thereof.[6] Accordingly, this case falls under the qualifying provisos of Section 5(b), Article III of R.A. 7610 because the allegations in the information make out a case for acts of lasciviousness, as defined under Article 336 of the RPC, and the victim is under 12 years of age:

That on or about 8 o'clock in the evening of July 18, 2007 at Palpas, Ligao City, Philippines, and within the jurisdiction of this Honorable Court**, the above-named accused, with lewd and unchaste**

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[6] *Chinese Flour Importers Association v. Price Stabilization Board*, 89 Phil. 439, 451 (1951); *Arenas v. City of San Carlos (Pangasinan)*, 172 Phil. 306, 311 (1978).

design, through force and intimidation, did then and there, willfully, unlawfully and feloniously, insert his hand inside the panty of AAA, **a minor of 7 years old** and **mash her vagina**, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.[7]

Quimvel should therefore be prosecuted under Article 336 of the RPC, and the indeterminate sentence should be computed based on the imposable penalty of *reclusion temporal* in its medium period, pursuant to Section 5(b), Article III of R.A. 7610.

To be sure, Quimvel cannot be merely penalized with *prisión correccional* for acts of lasciviousness under Article 336 of the RPC when the victim is a child because it is contrary to the letter and intent of R.A. 7610 to provide for stronger deterrence and special protection against child abuse, exploitation and discrimination. This legislative intent is expressed under Section 10, Article VI of R.A. 7610 which, among others, increased by one degree the penalty for certain crimes when the victim is a child under 12 years of age, to wit:

> Section 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. —
>
> x x x x x x x x x
>
> For purposes of this Act, the penalty for the commission of acts punishable under Articles 248, 249, 262, paragraph 2, and 263, paragraph 1 of Act No. 3815, as amended, for the crimes of murder, homicide, other intentional mutilation, and serious physical injuries, respectively, shall be *reclusion perpetua* when the victim is under twelve (12) years of age. **The penalty for the commission of acts punishable under Article 337, 339, 340 and 341 of Act No. 3815, as amended, the Revised Penal Code, for the crimes of qualified seduction, acts of lasciviousness with consent of the offended party, corruption of minors, and white slave trade, respectively, shall be one (1) degree higher than that imposed by law when the victim is under twelve (12) years of age.**[8]

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[7] Emphasis added.

[8] Emphasis added.

To impose upon Quimvel an indeterminate sentence computed from the penalty of *prisión correccional* under Article 336 of the RPC would defeat the purpose of R.A. 7610 to provide for stronger deterrence and special protection against child abuse, exploitation and discrimination. **First**, the imposition of such penalty would erase the substantial distinction between acts of lasciviousness under Article 336 and acts of lasciviousness with consent of the offended party under Article 339,[9] which used to be punishable by *arresto mayor*, and now by *prisión correccional* pursuant to Section 10, Article VI of R.A. 7610. **Second**, it would inordinately put on equal footing the acts of lasciviousness committed against a child and the same crime committed against an adult, because the imposable penalty for both would still be *prisión correccional*, save for the aggravating circumstance of minority that may be considered against the perpetrator. **Third**, it would make acts of lasciviousness against a child an offense a probationable offense, pursuant to the Probation Law of

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[9] ARTICLE 339. *Acts of Lasciviousness with the Consent of the Offended Party*. — The penalty of *arresto mayor* shall be imposed to punish any other acts of lasciviousness committed by the same persons and the same circumstances as those provided in articles 337 and 338.

ARTICLE 337. *Qualified Seduction*. — The seduction of a virgin over twelve years and under eighteen years of age, committed by any person in public authority, priest, house-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman seduced, shall be punished by *prisión correccional* in its minimum and medium periods.

The penalty next higher in degree shall be imposed upon any person who shall seduce his sister or descendant, whether or not she be a virgin or over eighteen years of age.

Under the provisions of this Chapter, seduction is committed when the offender has carnal knowledge of any of the persons and under the circumstances described herein.

ARTICLE 338. *Simple Seduction.* — The seduction of a woman who is single or a widow of good reputation, over twelve but under eighteen years of age, committed by means of deceit, shall be punished by *arresto mayor*.

1976,[10] as amended by R.A. 10707.[11] Indeed, while the foregoing implications are favorable to the accused, they are contrary to the State policy and principles under R.A. 7610 and the Constitution on the special protection to children.

Based on the the legal definitions of "child abuse," it is also my view that there is no need to allege that the lascivious conduct be committed "with a child exploited in other prostitution" or with habituality, before a person may be held liable for acts of lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. 7610.

Section 3, Article I of R.A. 7610 states that **"child abuse"** refers to the maltreatment, **whether habitual or not**, of the child which includes any of the following:

(1) Psychological and physical abuse, neglect, cruelty, **sexual abuse** and emotional maltreatment;
(2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
(3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or
(4) Failure to immediately give medical attention to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

Section 5, Article III of R.A. 7610 deems to be "children exploited in prostitution and other sexual abuse" those children, whether male or female, who indulge in sexual intercourse or lascivious conduct either (1) for money, profit or any other consideration; or (2) due to coercion or influence of any adult, syndicate or group.

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[10] Presidential Decree No. 968.

[11] *An Act Amending Presidential Decree No. 968, otherwise known as the "Probation Law of 1976", as amended*. Approved on November 26, 2015. Section 9 of the Decree, as amended, provides that the benefits thereof shall not be extended to those "(a) sentenced to serve a maximum term of imprisonment of more than six (6) years." Note: The duration of the penalty of *prisión correccional* is 6 months and 1 day to 6 years.

Corollarily, the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases define the terms "child abuse," "sexual abuse", and "lascivious conduct" as follows:

> Section 2. Definition of Terms. — As used in these Rules, unless the context requires otherwise—
>
> x x x x x x x x x
>
> b) "**Child abuse**" refers to the infliction of physical or psychological injury, cruelty to, or neglect, **sexual abuse** or exploitation of a child;
>
> x x x x x x x x x
>
> g) "**Sexual abuse**" includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or **lascivious conduct** or the molestation, **prostitution**, or incest with children;
>
> x x x x x x x x x
>
> h) "**Lascivious conduct**" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person; x x x[12]

From the foregoing definitions, it can be deduced that a single lascivious conduct is enough to penalize Quimvel for acts of lasciviousness under Article 336 of the RPC, in relation to R.A. 7610. These definitions negate the necessity to allege in the information a separate and distinct act of sexual abuse apart from the lascivious act complained of. R.A. 7610 does not merely cover a situation wherein a child is being abused for profit as in prostitution, but also one wherein a child engages in any lascivious conduct through coercion or intimidation, even if such sexual abuse occurred only once, as in Quimvel's case. Also, based on the definitions above, prostitution — which involves an element of habituality — is just one of the several

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[12] Emphasis added.

other forms of sexual abuses. Thus, neither habituality nor the fact that the child is exploited in prostitution, is required to be alleged in the information for acts of lasciviousness because Article 336 of the RPC does not so provide.

In the same vein, the title of Article III of R.A. 7610 itself is clear that the subsequent provisions thereof pertain not only on the subject of "child prostitution" but also on "other sexual abuse." Under Section 5 thereof, those considered to be under child prostitution are "children, whether male or female, who for money, profit, or any other consideration" "indulge in sexual intercourse or lascivious conduct" and those that do not fall under that category are those children, who, "due to the coercion or influence of any adult, syndicate or group" "indulge in sexual intercourse or lascivious conduct." This case falls under the second scenario where no money, profit or any other consideration was involved.

To construe "other sexual abuse" as referring to any other sexual abuse other than the acts of lasciviousness complained of is wrong. The law did not use such phrase in order to cover other forms of sexual abuse that a child might have previously experienced, other than being exploited in prostitution for profit, or for any other consideration. Instead, the law clearly distinguishes those children who indulged in sexual intercourse or lascivious conduct for money, profit, or any other consideration, from those children who, without money, profit, or any other consideration, had sexual intercourse or lascivious conduct due to the coercion or influence of any adult, syndicate or group. This is further bolstered by the use of the disjunctive word "or" in separating the two contexts contemplated in the law. Thus, it is erroneous to interpret that R.A. 7610 contemplates situations wherein a child, who was already subjected to prostitution or other sexual abuse, is again subjected to another abuse or lascivious conduct. Note that in the definition of "child abuse," the phrase "whether habitual or not" is used to describe the frequency upon which a maltreatment can be considered as an abuse. Thus, a single act of abuse is enough for a perpetrator to be considered as having

violated the law. To interpret it otherwise would lead to an absurdity and ambiguity of the law.

In ***Olivarez vs. Court of Appeals***,[13] the Court held that a child is deemed subjected to other sexual abuse when the child indulges in lascivious conduct under the coercion or influence of any adult. The Court found that the 16-year old victim in that case was sexually abused because she was coerced or intimidated by petitioner to indulge in a lascivious conduct. According to the Court**, it is inconsequential that the sexual abuse occurred only once** because, as expressly provided in Section 3 (b) of R.A. 7610, the abuse may be habitual or not. It also observed that Article III of R.A. 7610 is captioned as "Child Prostitution and Other Sexual Abuse" because Congress really intended to cover a situation where the minor may have been coerced or intimidated into lascivious conduct, not necessarily for money or profit, hence, the law covers not only child prostitution but also other forms of sexual abuse. In support of its ruling in ***Olivarez***, the Court cited ***People v. Larin***[14] which was restated in ***Amployo v. People,***[15] thus:

> **A child is deemed** exploited in prostitution **or subjected to other sexual abuse**, **when the child indulges in** sexual intercourse or **lascivious conduct** (a) for money, profit, or any other consideration; or (b) **under the coercion or influence of any adult, syndicate or group**. x x x.
>
> It must be noted that the law covers not only a situation in which a child is abused for profit, but also one in which a child, through coercion or intimidation, engages in lascivious conduct.[16]

Associate Justice Antonio T. Carpio dissented in ***Olivarez*** where he pointed out that the second element of acts of lasciviousness, Section 5, Article III of R.A. 7610 requires that the accused performs

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[13] 503 Phil. 421, 432 (2005). Penned by Associate Justice Consuelo Ynares-Santiago, with Associate Justices Leonardo A. Quisumbing and Adolfo S. Azcuna, concurring; and Chief Justice Hilario G. Davide, Jr. joining the dissent of Associate Justice Antonio T. Carpio.

[14] 357 Phil. 987, 998 (1998).

[15] 496 Phil. 747, 758 (2005).

[16] Emphasis added.

on the child a lascivious conduct separate and different from the child's exploitation in prostitution or subject to other sexual abuse.

However, in ***Garingarao v. People***,[17] the Court, in a Decision[18] penned by Justice Carpio, affirmed the conviction of petitioner for acts of lasciviousness in relation to R.A. 7610 in an Information which reads:

> That on or about the 29th day of October 2003, at Virgen Milagrosa University Hospital, San Carlos City, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there, willfully, unlawfully and feloniously touched the breast of AAA, 16 years of age, touched her genitalia, and inserted his finger into her vagina, to the damage and prejudice of said AAA who suffered psychological and emotional disturbance, anxiety, sleeplessness and humiliation.
>
> Contrary to Article 336 of the Revised Penal Code in relation to RA 7610.

Citing ***Olivarez***, the Court held in ***Garingarao*** that petitioner is liable for acts of lasciviousness in relation to R.A. 7610 even if the crime occurred only once:

> The Court has ruled that a child is deemed subject to other sexual abuse when the child is the victim of lascivious conduct under the coercion or influence of any adult. In lascivious conduct under the coercion or influence of any adult, there must be some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will. In this case, Garingarao coerced AAA into submitting to his lascivious acts by pretending that he was examining her.
>
> Garingarao insists that, assuming that the testimonies of the prosecution witnesses were true, he should not be convicted of violation of RA 7610 because the incident happened only once. Garingarao alleges that the single incident would not suffice to hold him liable under RA 7610.
>
> Garingarao's argument has no legal basis.

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[17] 669 Phil. 512, 516 (2011).

[18] Concurred in by Associate Justices Teresita J. Leonardo-de Castro, Arturo D. Brion, Diosdado M. Peralta and Jose Portugal Perez.

The Court has already ruled that it is inconsequential that sexual abuse under RA 7610 occurred only once. Section 3 (b) of RA 7610 provides that the abuse may be habitual or not. Hence, the fact that the offense occurred only once is enough to hold Garingarao liable for acts of lasciviousness under RA 7610.[19]

To be sure, if and when there is an absurdity in the interpretation of the provisions of the law, the proper recourse is to refer to the objectives or the declaration of state policy and principles under Section 2 of the R.A. 7610, as well as Section 3(2), Article XV of the 1987 Constitution:

[R.A. 7610] Sec. 2. Declaration of State Policy and Principles. - It is hereby declared to be the policy of the State **to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development** including child labor and its worst forms; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.

It shall be the policy of the State to protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.

The best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principle of First Call for Children as enunciated in the United Nations Convention on the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities foe a useful and happy life. [Emphasis added]

[Article XV 1987 Constitution] Section 3. The State shall defend:

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[19] Emphasis added.

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(2) The **right of children to** assistance, including proper care and nutrition, and **special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development.**[20]

Clearly, the objective of the law, more so the Constitution, is to provide a special type of protection for children from all types of abuse. Hence, it can be rightly inferred that the title used in Article III, Section 5, "Child Prostitution and Other Sexual Abuse" does not mean that it is only applicable to children used as prostitutes as the main offense and the other sexual abuses as additional offenses, the absence of the former rendering inapplicable the imposition of the penalty provided under R.A. 7610 on the other sexual abuses committed by the offenders on the children concerned.

Even if the remaining issue in the *en banc* decision in ***Dimakuta v. People***[21] was whether or not an accused is disqualified to apply for probation even if such appeal resulted in the reduction of the non-probationable penalty imposed to a probationable one, the majority has nonetheless discussed at length the matters of sexual abuse under R.A. 7610 and acts of lasciviousness under the RPC, thus:

> Petitioner was charged and convicted by the trial court with violation of Section 5 (b), Article III of R.A. No. 7610 based on the complaint of a sixteen (16)-year-old girl for allegedly molesting her by touching her breast and vagina while she was sleeping.
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> x x x x x x x x x
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> The elements of sexual abuse are as follows:
>
> 1. The accused commits the act of sexual intercourse or lascivious conduct.
>
> 2. The said act is performed with a child exploited in prostitution or subjected to sexual abuse.

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[20] Emphasis added.

[21] G.R. No. 206513, October 20, 2015, 773 SCRA 228.

3. The child, whether male or female, is below 18 years of age.

Under Section 5, Article III of R.A. No. 7610, **a child is deemed subjected to other sexual abuse when he or she indulges in lascivious conduct under the coercion or influence of any adult.** This statutory provision must be distinguished from Acts of Lasciviousness under Articles 336 and 339 of the RPC. As defined in Article 336 of the RPC, Acts of Lasciviousness has the following elements:

(1) That the offender commits any act of lasciviousness or lewdness;

(2) That it is done under any of the following circumstances:

a. By using force or intimidation; or
b. When the offended party is deprived of reason or otherwise unconscious; or
c. When the offended party is under 12 years of age; and

(3) That the offended party is another person of either sex.

Article 339 of the RPC likewise punishes acts of lasciviousness committed with the consent of the offended party if done by the same persons and under the same circumstances mentioned in Articles 337 and 338 of the RPC, to wit:

1. if committed against a virgin over twelve years and under eighteen years of age by any person in public authority, priest, home-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman; or

2. if committed by means of deceit against a woman who is single or a widow of good reputation, over twelve but under eighteen years of age.

Therefore, if the victim of the lascivious acts or conduct is over 12 years of age and under eighteen (18) years of age, the accused shall be liable for:

1. Other acts of lasciviousness under Art. 339 of the RPC, where the victim is a virgin and consents to the

lascivious acts through abuse of confidence or when the victim is single or a widow of good reputation and consents to the lascivious acts through deceit, or;

2. Acts of lasciviousness under Art. 336 if the act of lasciviousness is not covered by lascivious conduct as defined in R.A. No. 7610. In case the acts of lasciviousness is covered by lascivious conduct under R.A. No. 7610 and it is done through coercion or influence, which establishes absence or lack of consent, then Art. 336 of the RPC is no longer applicable

3. **Section 5(b), Article III of R.A. No. 7610, where there was no consent on the part of the victim to the lascivious conduct, which was done through the employment of coercion or influence. The offender may likewise be liable for sexual abuse under R.A. No. 7610 if the victim is at least eighteen (18) years and she is unable to fully take care of herself or protect herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition**.

Article 226-A, paragraph 2 of the RPC, punishes inserting of the penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person if the victim did not consent either it was done through force, threat or intimidation; or when the victim is deprived of reason or is otherwise unconscious; or by means of fraudulent machination or grave abuse of authority as sexual assault as a form of rape. However, in instances where the lascivious conduct is covered by the definition under R.A. No. 7610, where the penalty is *reclusion temporal* medium, and the act is likewise covered by sexual assault under Article 266-A, paragraph 2 of the RPC, which is punishable by *prisión mayor*, the offender should be liable for violation of Section 5 (b), Article III of R.A. No. 7610, where the law provides for the higher penalty of *reclusion temporal* medium, if the offended party is a child victim. But if the victim is at least eighteen (18) years of age, the offender should be liable under Art. 266-A, par. 2 of the RPC and not R.A. No. 7610, unless the victim is at least eighteen (18) years and she is unable to fully take care of herself or protect herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability

or condition, in which case, the offender may still be held liable for sexual abuse under R.A. No. 7610.

There could be no other conclusion, a child is presumed by law to be incapable of giving rational consent to any lascivious act, taking into account the constitutionally enshrined State policy to promote the physical, moral, spiritual, intellectual and social well-being of the youth, as well as, in harmony with the foremost consideration of the child's best interests in all actions concerning him or her. This is equally consistent with the **declared policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development;** provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation, and discrimination. Besides, **if it was the intention of the framers of the law to make child offenders liable only of Article 266-A of the RPC, which provides for a lower penalty than R.A. No. 7610, the law could have expressly made such statements.**

As correctly found by the trial court, all the elements of sexual abuse under Section 5 (b), Article III of R.A. No. 7610 are present in the case at bar.

First, petitioner's lewd advances of touching the breasts and vagina of his hapless victim constitute **lascivious conduct** as defined in Section 32, Article XIII of the Implementing Rules and Regulations (IRR) of R.A. No. 7610:

> [T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.

Second, petitioner clearly has moral ascendancy over the minor victim not just because of his relative seniority but more importantly due to the presumed presence of mutual trust and confidence between them by virtue of an existing employment relationship, AAA being a domestic helper in petitioner's household. Notably, a child is considered as sexually abused under Section 5 (b) of R.A. No. 7610 when he or she is subjected to lascivious conduct under the coercion

or influence of any adult. Intimidation need not necessarily be irresistible. It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party. The law does not require physical violence on the person of the victim; moral coercion or ascendancy is sufficient. On this point, *Caballo v. People* explicated:

> As it is presently worded, Section 5, Article III of RA 7610 provides that when a child indulges in sexual intercourse or any lascivious conduct due to the coercion or influence of any adult, the child is deemed to be a "child exploited in prostitution and other sexual abuse." In this manner, the law is able to act as an effective deterrent to quell all forms of abuse, neglect, cruelty, exploitation and discrimination against children, prejudicial as they are to their development.
>
> In this relation, case law further clarifies that sexual intercourse or lascivious conduct under the coercion or influence of any adult exists when there is some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will. Corollary thereto, Section 2(g) of the Rules on Child Abuse Cases conveys that sexual abuse involves the element of influence which manifests in a variety of forms. It is defined as:
>
> > The employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children.
> >
> > To note, the term "influence" means the "improper use of power or trust in any way that deprives a person of free will and substitutes another's objective." Meanwhile, "coercion" is the "improper use of . . . power to compel another to submit to the wishes of one who wields it."

Finally, the victim is 16 years of age at the time of the commission of the offense. Under Section 3 (a) of R.A. No. 7610, "children" refers to "persons below eighteen (18) years of age or those over but unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation

or discrimination because of a physical or mental disability or condition."[22]

In view of the above discussion in ***Dimakuta v. People***,[23] to which the *ponencia* appears to subscribe, and considering that all the elements of acts of lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. 7610,[24] have been proven beyond reasonable doubt, the CA correctly upheld the RTC in convicting Quimvel of the said crime.

Moreover, the application of the provisions of R.A. 7610, although not specifically stated in the Information, does not violate the accused's right to be informed of the nature and cause of the accusation against him. This is because all the elements of the crime of "sexual abuse"[25] as contemplated in Section 5, Article III of R.A. 7610, as well as the age of minority of the victim, are all sufficiently alleged in the same Information in this wise: "the above-named accused [Quimvel], **with lewd and unchaste design**, **through force and intimidation**, did then and there, willfully, unlawfully, and feloniously, **insert his hand inside the panty of [AAA]**, a minor of **7 years old and mash her vagina**, against her will and consent, to her damage and prejudice."[26]

It bears emphasis that since Section 5, Article III of R.A. 7610 already **deems** to be "children exploited in prostitution and other sexual abuse" those children, whether male or female, who indulge in sexual intercourse or lascivious conduct either (1) for money, profit or any other consideration; or (2) **due to**

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[22] Emphasis added and citations omitted.

[23] *Supra.*

[24] 1. The accused commits the act of sexual intercourse or lascivious conduct.

2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.

3. That child, whether male or female, is below 18 years of age.

[25] *Id.*

[26] Emphasis added.

coercion or influence of any adult, syndicate or group, the afore-quoted allegation that the lascivious conduct was done "through force and intimidation," suffices to inform the accused of the second element of sexual abuse.

Having in mind the State policies and principles behind R.A. 7610 (*Special Protection of Children Against Abuse, Exploitation, and Discrimination Act*) and R.A. 8353[27] (*Anti-Rape Law of 1997*), as well as the statutory construction rules that penal laws should be strictly construed against the state and liberally in favor of the accused, and that every law should be construed in such a way that it will harmonize with existing laws on the same subject matter, I submit that the following are the applicable laws and imposable penalties for **acts of lasciviousness** committed against a child[28] under Article 336 of the RPC, in relation to R.A. 7610:

1. Under 12 years old – Section 5(b), Article III of R.A. 7610, in relation to Article 336 of the RPC, as amended by R.A. 8353, applies and the imposable penalty is ***reclusion temporal* in its medium period**, instead of *prisión correccional*. In *People v. Fragante,*[29] *Imbo v. People of the Philippines,*[30] and *People of the Philippines v. Santos,*[31] the accused were convicted of acts of lasciviousness committed against victims under 12 years old, and were penalized under Section 5(b),

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[27] *An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime against Persons, Amending for the Purpose Act No. 3815, As Amended, Otherwise Known as the Revised Penal Code, and For Other Purposes*.

[28] Section. 3. *Definition of Terms*. –

(a) "Children" refers to a person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect from themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

[29] 657 Phil. 577, 601 (2011)

[30] G.R. No. 197712, April 20, 2015, 756 SCRA 196, 210.

[31] G.R. No. 205308, February 11, 2015, 750 SCRA 471, 488.

Artcile III of R.A. 7610, and not under Article 336 of the RPC, as amended.

2. **12 years old and below 18, or 18 or older under special circumstances under Section 3(a) of R.A. 7610**[32] – Section 5(b), Article III of R.A. 7610 in relation to Article 336 of the RPC, as amended, applies and the penalty is ***reclusion temporal*** **in its medium period to** ***reclusion perpetua***. This is because the proviso under Section 5(b) apply only if the victim is under 12 years old, but silent as to those 12 years old and below 18; hence, the main clause thereof still applies in the absence of showing that the legislature intended a wider scope to include those belonging to the latter age bracket. The said penalty was applied in *People of the Philippines v. Bacus*[33] and *People of the Philippines v. Baraga*[34] where the accused were convicted of acts of lasciviousness committed against victims 12 years old and below 18, and were penalized under Section 5(b), Article III of R.A. 7610. But, if the acts of lasciviousness is not covered by lascivious conduct as defined in R.A. 7610, such as when the victim is 18 years old and above, acts of lasciviousness under Article 336 of the RPC applies and the penalty is *prisión correccional*.[35]

Curiously, despite the clear intent of R.A. 7610 to provide for stronger deterrence and special protection against child abuse, the penalty [***reclusion temporal*** **medium**] when the victim is under 12 years old is lower compared to the penalty [***reclusion temporal*** **medium to** ***reclusion perpetua***] when the victim is 12 years old and below 18. The same holds true if the crime of acts of lasciviousness is attended by an aggravating circumstance or committed by persons under Section 31,[36] Article XII of R.A.

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[32] Section. 3. *Definition of Terms*. –

(a) "Children" refers to a person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect from themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

[33] G.R. No. 208354, August 26, 2015, 768 SCRA 318, 341.

[34] G.R. No. 208761, June 4, 2014, 725 SCRA 293, 303.

[35] *Dimakuta v. People, supra* -note 18.

[36] Section 31. *Common Penal Provisions.*—

7610, in which case, the imposable penalty is *reclusion perpetua*. In contrast, when no mitigating or aggravating circumstance attended the crime of acts of lasciviousness, the penalty therefor when committed against a child under 12 years old is aptly higher than the penalty when the child is 12 years old and below 18. This is because, applying the Indeterminate Sentence Law, the minimum term in the case of the younger victims shall be taken from *reclusion temporal* minimum,[37] whereas as the minimum term in the case of the older victims shall be taken from *prisión mayor medium* to *reclusion temporal minimum.*[38] It is a basic rule in statutory construction that what courts may correct to reflect the real and apparent intention of the legislature are only those which are clearly clerical errors or obvious mistakes, omissions, and misprints,[39] but not those due to oversight, as shown by a review of extraneous circumstances, where the law is clear, and to correct it would be to change the meaning of the law.[40] To my mind, a corrective legislation is the proper remedy to address the noted incongruent penalties for acts of lasciviousness committed against a child.

Too, it bears emphasis that R.A. 8353 did not expressly repeal Article 336 of the RPC, as amended. Section 4 of R.A. 8353 only states that Article 336 of the RPC, as amended, and all laws, rules and regulations inconsistent with or contrary to the provisions thereof are deemed amended, modified or repealed, accordingly. There is nothing inconsistent between the provisions of Article 336 of the RPC, as amended, and R.A. 8353, except in sexual assault as a form of rape. Hence, when the lascivious

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(b) The penalty provided herein shall be imposed in its **maximum period** when the perpetrator is an **ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity**, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked. [Emphasis added]

[37] Ranging from 12 years and 1 day to 14 years and 8 months.

[38] Ranging from 8 years and 1 day to 14 years and 8 months.

[39] *Lamb v. Phipps*, 22 Phil. 456 (1912).

[40] *People v. De Guzman, et al.*, 90 Phil. 132 (1951).

act is not covered by R.A. 8353, then Article 336 of the RPC is applicable, except when the lascivious conduct is covered by R.A. 7610.

In fact, R.A. 8353 only modified Article. 336 of the RPC, as follows: (1) by carrying over to acts of lasciviousness the additional circumstances[41]applicable to rape, *viz.*: threat and fraudulent machinations or grave abuse of authority; (2) by retaining the circumstance that the offended party is under 12 years old, and including dementia as another one, in order for acts of lasciviousness to be considered as statutory, wherein evidence of force or intimidation is immaterial because the offended party who is under 12 years old or demented, is presumed incapable of giving rational consent; and (3) by removing from the scope of acts of lasciviousness and placing under the crime of rape by sexual assault the specific lewd act of inserting the offender's penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. In fine, Article 336 of the RPC, as amended, is still a good law despite the enactment of R.A. 8353 for there is no irreconcilable inconsistency between their provisions.

Meanwhile, the Court is also not unmindful of the fact that the accused who commits acts of lasciviousness under Article 336 of the RPC, in relation to Section 5 (b), Article III of R.A. 7610, suffers the more severe penalty of *reclusion temporal* in its medium period, than the one who commits Rape Through Sexual Assault, which is merely punishable by *prisión mayor*. In ***People v. Chingh***,[42] the Court noted that the said fact is undeniably unfair to the child victim, and it was not the intention of the framers of R.A. 8353 to have disallowed the applicability of R.A. 7610 to sexual abuses committed to children. The Court held that **despite the passage of R.A. 8353, R.A. 7610 is still good law**, which must be applied when the victims are children

[41] Aside from use force or intimidation, or when the woman is deprived of reason or otherwise unconscious.

[42] 661 Phil. 208, 224 (2011).

or those "persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition."[43]

Finally, as the Court stressed in ***Dimakuta v. People***,[44] where the lascivious conduct is covered by the definition under R.A. 7610 where the penalty is *reclusion temporal* medium and the said act is likewise covered by sexual assault under Article 266-A, paragraph 2 of the RPC, which is punishable by *prisión mayor*, the offender should be liable for violation of Section 5(b), Article III of R.A. 7610, where the law provides the higher penalty of *reclusion temporal* medium, if the offended party is a child. But if the victim is at least eighteen (18) years of age, the offender should be liable under Article 266-A, par. 2 of the RPC and not R.A. 7610, unless the victim is at least 18 years old and she is unable to fully take care of herself or protect from herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, in which case, the offender may still be held liable of sexual abuse under R.A. 7610. The reason for the foregoing is that, aside from the affording special protection and stronger deterrence against child abuse, R.A. 7610 is a special law which should clearly prevail over R.A. 8353, which is a mere general law amending the RPC.

CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur.

Petitioner Eduardo Quimvel *y* Braga (Quimvel) should be convicted under Section 5 (b), Article III of Republic Act No.

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[43] Section 3 (a), Article I of R.A. 7610.

[44] *Supra* note 18, at 264-265.

(RA) 7610,[1] otherwise known as the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act," in relation to Article 336 of the Revised Penal Code. As now subscribed to by the *ponencia*, the said provision covers a situation wherein a child engages in any lascivious conduct through coercion or intimidation, even if such sexual abuse occurred only once, as in Quimvel's case. To my mind, the law does not contemplate a situation where the acts of lasciviousness are committed on a child priorly exploited in prostitution or subjected to other sexual abuse. This latter position effectively requires allegation and proof of a first act of abuse committed against the same child victim for a sex offender to be convicted.

Section 5 (b), Article III of RA 7610 reads:

ARTICLE III

Child Prostitution and Other Sexual Abuse

Section 5. Child Prostitution and Other Sexual Abuse. – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, **are deemed to be children exploited in prostitution and other sexual abuse**.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

(1) Acting as a procurer of a child prostitute;

(2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;

(3) Taking advantage of influence or relationship to procure a child as prostitute;

[1] Entitled "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for other Purposes," approved on June 17, 1992.

(4) Threatening or using violence towards a child to engage him as a prostitute; or

(5) Giving monetary consideration goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; and x x x (Emphases supplied)

For the brief reasons that follow, I deem it enough that a singular act of sexual abuse be committed against a minor in order to qualify under the law's protection:

First, the prevailing Congressional intent behind RA 7610 was to establish "[a] national program for protection of children" which needs "not only the institutional protective mechanisms, but also a mechanism for strong deterrence against commission of abuse and exploitation."[2] In his sponsorship speech for Senate Bill No. 1209, from which RA 7610 originated, Senator Jose D. Lina, Jr. (Senator Lina, Jr.) mentioned that the law was "intended to provide stiffer penalties for abuse of children and to facilitate prosecution of perpetrators of abuse. It is intended to complement the provisions of the Revised Penal Code [at that time] where the crimes committed are those which lead children to prostitution and sexual abuse, trafficking in children and use of the young in pornographic activities."[3] Senator Lina, Jr. also presented cases of reported abuse, none of which imply that the child victims have been previously exploited. Instead,

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[2] See deliberations on Senate Bill No. 1209 dated April 29, 1991, Records of the Senate, Vol. IV, No. 111, p. 191.

[3] See deliberations on Senate Bill No. 1209 dated April 29, 1991, Records of the Senate, Vol. IV, No. 111, pp. 191-192.

they are straight-up cases of sexual abuse of minors.[4] Hence, if RA 7610 was directly meant to reinforce the legal framework against the sexual abuse of minors, it would not make any sense to first require a preliminary act of sexual abuse against a child before a sex offender could be punished under the same. Indeed, a person's chastity – much more a child's – is undoubtedly sacred and once ravaged, is forever lost and leaves a scar on his or her well-being. As such, our lawmakers, in crafting a special legislation precisely to deter child abuse, would not have thought of such absurdity.

Second, it is difficult – if not, insensible – to operationalize the application of RA 7610 under the theory that the commission of a prior act of sexual abuse is required before a lascivious conduct may be penalized under Section 5 (b) of the same law. For one, no operational parameter was provided by law to determine the existence of a prior sexual abuse so as to satisfy the preliminary element of the aforementioned theory. It is unclear whether a prior sexual abuse on the same child victim should be pronounced in an official court declaration, or whether a mere finding on that matter in the same case would suffice. The Congressional deliberations also express nothing on the necessity to determine a prior sexual abuse to qualify the lascivious conduct. If a prior sexual abuse was an integral element for prosecution, then it stands to reason that the language of the law or the deliberations should have addressed the same.

And third, while the grammatical structure of Section 5 (b) of RA 7610 may, if construed literally, be taken to mean that the victim should be one who is first "exploited in prostitution or subjected to other sexual abuse" as previously intimated during the deliberations on this case, this interpretation would surely depart from the law's purpose based on its policy considerations as afore-discussed. On the other hand, it is my view that Section 5 (b) can be construed in another way, in order to give full life and meaning to its avowed purpose, which is to "provide stiffer

[4] See deliberations on Senate Bill No. 1209 dated April 29, 1991, Records of the Senate, Vol. IV, No. 111, p. 192.

penalties for abuse of children and to facilitate prosecution of perpetrators of abuse."

Particularly, it is observed that the phrase "**a child exploited in prostitution or subject to other sexual abuse**" in Section 5 (b) has been priorly defined in the first paragraph of the same provision as "**[a child], whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge[s] in sexual intercourse or lascivious conduct**." Hence, just by switching this phrase with its equivalent technical definition in the first paragraph, Section 5 (b) may then be construed as follows: "**Those who commit the act of sexual intercourse or lascivious conduct against [a child], whether male or female, x x x for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group.**"

To my mind, this reading equally passes grammatical logic, and most importantly, renders Section 5 (b) consistent with the fundamental intent of the law. Besides, nowhere from the entirety of the law's other provisions nor the deliberations on the same could one discern that the requirement of a prior sexual affront on a child exists. Ultimately, despite Section 5 (b)'s ambiguous wording, it should be remembered that in the final analysis:

> The legislative intent is not at all times accurately reflected in the manner in which the resulting law is couched. Thus, applying a *verba legis* or strictly literal interpretation of a statute may render it meaningless and lead to inconvenience, an absurd situation or injustice. To obviate this aberration, and bearing in mind the principle that the intent or the spirit of the law is the law itself, resort should be to the rule that the spirit of the law controls its letter.[5]

ACCORDINGLY, I vote to **DENY** the petition. The conviction of petitioner Eduardo Quimvel *y* Braga for the crime of Acts of Lasciviousness in relation to Section 5 (b),

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[5] *League of Cities of the Philippines v. COMELEC*, 623 Phil. 531, 564-565 (2009).

Article III of Republic Act No. 7610 should be **AFFIRMED** with **MODIFICATION** anent the proper penalty as held in the *ponencia*.[6]

SEPARATE OPINION

LEONEN, *J.*:

I concur with the majority. The accused has been properly charged and convicted for violation of Article III, Section 5 of Republic Act No. 7610. I add however, that I entertain serious doubts as to whether he could have been convicted of violation of Article 336 of the Revised Penal Code (Acts of Lasciviousness) due to a lacuna in Republic Act No. 8353 or the Anti-Rape Law. That law properly reclassified rape as a crime against persons, thereby leaving Article 336 in a different title without the provisions it used to refer to.

However, in view of the resolution of this case, this issue need not be considered. It should however, be the subject of a more serious deliberation in the proper case, where it becomes salient and is fully argued by the parties.

ACCORDINGLY, I vote to AFFIRM petitioner's conviction.

DISSENTING OPINION

CARPIO, *J.*:

Lascivious acts committed against a child under 12 years old may fall under either Section 5(b) of Republic Act No. 7610 (RA 7610)[1] or Article 336 of the Revised Penal Code (RPC). As both laws remain to be good and effective, I submit this Separate Opinion to clarify and disti11guish these two seemingly overlapping provisions.

I agree with the majority opinion when it states that Article 336 of the RPC was never repealed by Republic Act No. 8353

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[6] See *ponencia*, pp. 22-23.

[1] An Act Providing for Stronger Deterrence Protection against Child Abuse, Exploitation, and Discrimination and for Other purposes.

(RA 8353).[2] While the latter law expressly repealed Article 335, this does not render Article 336 incomplete or ineffective. As the majority opinion explains, it simply means that the "preceding article" referred to in Article 336 would now refer to Article 266-A, which replaced Article 335.

As it now stands, the crime of acts of lasciviousness under Article 336 of the RPC has the following elements:

1. That the offender commits any act of lasciviousness or lewdness;
2. That the act of lasciviousness is committed against a person of either sex;
3. That it is done under any of the following circumstances:
   a. By using force or intimidation;
   b. When the offended party is deprived of reason or otherwise unconscious; or
   c. When the offended party is under 12 years of age or is demented.[3]

On the other hand, Section 5(b) of RA 7610 has the following elements:

1. The accused commits the act of sexual intercourse or lascivious conduct.
2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.
3. That child, whether male or female, is below 18 years of age.[4]

The majority opinion states that for an accused to be held criminally liable for lascivious conduct under Section 5(b) of RA 7610, the requisites under Article 336 of the RPC must be

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[2] The Anti-Rape Law of 1997.

[3] *PO3 Sombilon, Jr. v. People of the Philippines*, 617 Phil. 187 (2009).

[4] *Olivarez v. Court of Appeals,* 503 Phil. 421 (2005).

met **in addition** to the requisites under Section 5(b) of RA 7610. Moreover, based on the elements of Article 336 of the RPC and Section 5(b) of RA 7610 enumerated above, it is evident that both provisions share some similar elements. The main difference lies in the second element of Section 5(b) of RA 7610 that the act is performed with a child exploited in prostitution or subjected to other sexual abuse. Thus, to he convicted of lascivious conduct under Section 5(b) of RA 7610 – rather than acts of lasciviousness under Article 336 of the RPC – it is essential to prove that the child against whom the act was committed is a child exploited in prostitution or subjected to other sexual abuse.

Thus, the difference is clear: under Article 336 of the RPC, the accused performs the act of lasciviousness with a child who is neither exploited in prostitution nor subjected to "other sexual abuse" while under Section 5(b) of RA 7610 the act is performed with a child who is either exploited in prostitution or subjected to "other sexual abuse."

In this case, the majority opinion states that the second element of Section 5(b) of RA 7610 was met because the lascivious conduct was done under the "coercion or influence" of an adult. It assumes that if coercion or influence was used to perform a lascivious act with a child, such child is subjected to "other sexual abuse." The majority opinion goes further to state that "force or intimidation" (the terms used in the Information against Quimvel) is subsumed under "coercion or influence," which again, it deems as "other sexual abuse."

The main issue is whether or not the second element of Section 5(b) of RA 7610 was correctly alleged in the Information and whether it was sufficiently proven by the prosecution during the trial. I submit that the second element - that the child is "exploited in prostitution or subjected to other sexual abuse" was **neither correctly alleged nor proven beyond reasonable doubt**.

First, I would like to distinguish the first and second elements of Section 5(b) of RA 7610. The first element - that the accused

commits the act of sexual intercourse or lascivious conduct - refers to the very act complained of against the accused. The second element - that the act is performed with a child exploited in prostitution or subjected to other sexual abuse - refers to the circumstance of the child against whom the act was committed. This second element does not necessarily have any relation to the act of the accused as this relates to the child alone. The first and second elements refer to two entirely different and separate matters. One refers to the act committed by the accused while the other refers to the circumstance of the child victim, which may or may not be related to the act committed by the accused.

Second, being under the "coercion or influence" of an adult does not, by itself, make the child automatically subjected to "other sexual abuse." Section 5 of RA 7610 provides in part:

> SECTION 5. Child Prostitution and Other Sexual Abuse. - Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

To understand this provision, I looked into the deliberations of the Senate, which are also quoted in the majority opinion:

> Senator Angara. I refer to line 9, "who for money or profit." I would like to amend this, Mr. President, to cover a situation where the minor may have been coerced or intimidated into this lascivious conduct, not necessarily for money or profit, so that we can cover those situations and not leave loophole in this section.
>
> The proposal I have is something like this: WHO FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR DUE TO THE COERCION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP INDULGE, et cetera.
>
> The President Pro Tempore. I see. That would mean also changing the subtitle of Section 4. Will it no longer be child prostitution?
>
> Senator Angara. No, no. Not necessarily, Mr. President, because **we are still talking of the child who is being misused for sexual purposes either for money or for consideration. What I am trying**

to cover is the other consideration. Because, here, it is limited only to the child being abused or misused for sexual purposes, only for money or profit.

I am contending, Mr. President, that there may be situations where the child may not have been used for profit or ...

The President Pro Tempore. So it is no longer prostitution. Because the essence of prostitution is profit.

Senator Angara. Well, the Gentleman is right. Maybe the heading ought to be expanded. But, still, the President will agree that that is a form or manner of child abuse.

The President Pro Tempore. What does the Sponsor say? Will the Gentleman kindly restate the amendment?

ANGARA AMENDMENT

Senator Angara. The new section will read something like this, Mr. President: MINORS, WHETHER MALE OR FEMALE, WHO FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP INDULGE IN SEXUAL INTERCOURSE, et cetera.

Senator Lina. It is accepted, Mr. President.

The President Pro Tempore. Is there any objection? [Silence] Hearing none, the amendment is approved.

How about the title, "Child Prostitution", shall we change that too? Senator Angara. Yes, Mr. President, to cover the expanded scope.

The President Pro Tempore. Is that not what we would call probable 'child abuse'?

Senator Angara. Yes, Mr. President.

The President Pro Tempore. Subject to rewording. Is there any objection? [Silence] Hearing none, the amendment is approved x x x.[5] (Boldfacing and underscoring supplied)

Based on the foregoing, it is clear that this provision was crafted to cover a situation where sexual intercourse or lascivious

[5] Record of the Senate, Vol.1, No.7, pp. 261-263, cited in *People v. Larin,* 357 Phil. 987 (1998).

conduct is performed with **a child who is being abused or misused for sexual purposes**. The phrase "or any other consideration or due to the coercion or influence of any adult, syndicate or group" was added to merely cover situations where a child is abused or misused for sexual purposes without any monetary gain or profit. This was significant because profit or monetary gain is essential in prostitution. Thus, the lawmakers intended that in case all the other elements of prostitution are present, but the monetary gain or profit is missing, the sexually abused and misused child would still be afforded the same protection of the law as if he or she were in the same situation as a child exploited in prostitution.

Accordingly, "coercion or influence," on its own, does not make the child subjected to "other sexual abuse." The "coercion or influence" must have been used to abuse or misuse the child for sexual purposes, and again, this must have been the circumstance of the child when the act complained of - the lascivious conduct of the accused - was performed against the child. The "coercion or influence" should refer to the circumstance of the child and not to the lascivious conduct complained of.

Moreover, if as the majority opinion states, "force or intimidation" is subsumed under "coercion or influence" and being under the "coercion or influence" of an adult is enough to deem a child already subjected to "other sexual abuse," how will Section 5(b) of RA 7610 be any different from Article 336 of the RPC? **It should be noted that "force or intimidation" is also one of the elements of acts of lasciviousness under Article 336 of the RPC.** To equate the two terms would result in disregarding the different crimes and penalties under the two different provisions of law. To appreciate the difference between these provisions, "force or intimidation" under Article 336 of the RPC must be understood in relation to the act complained of, that is, whether the lascivious conduct was done with force or intimidation against the victim. In contrast, "coercion or influence" as used in RA 7610 should be read with reference to the circumstance of the child, that is, whether

"coercion or influence" was used to exploit the child in prostitution or to subject the child to "other sexual abuse."

It is clear that the lawmakers intended to afford more protection to the sexually misused and abused children rather than those children who were not. There simply would have been no need to include the element that the child is exploited in prostitution or subjected to "other sexual abuse" if this were not the case. If the intention of the law was merely to protect children against sexual abuse, without regard to their circumstance of being exploited in prostitution or subjected to other sexual abuse, the provision could have simply omitted the reference to prostitution or other sexual abuse so that all children would be covered under this provision. However, the lawmakers expressly included prostitution or being subjected to "other sexual abuse" as one of the elements of Section 5(b) of RA 7610 because of the greater need to protect such children. And because of this greater need, a higher penalty is imposed as well.

This is not to say, however, that the accused himself must have exploited the child in prostitution or subjected the child to "other sexual abuse." The exploitation of the child in prostitution or subjection of the child to "other sexual abuse" may be committed by persons other than the accused. I agree with the majority opinion that the offense under Section 5(b) of RA 7610 can be committed even though the abuse complained of occurred only once. The sexual intercourse or lascivious conduct committed by the accused may have been a singular instance and not a habitual occurrence. Indeed, the first element merely requires an act Thus, one single act of the accused is enough. However, that singular act must have been done against a child who was already exploited in prostitution or subjected to "other sexual abuse." Again, the act of the accused and the circumstance of the child are two separate and distinct elements.

I also agree with the majority opinion that there need not be a third person subjecting the child to "other sexual abuse." It could very well happen that the person who exploited the child in prostitution is the same person accused of performing the

lascivious conduct with the child. If the accused has sexually misused the child on more than one occasion, then that child becomes a child subjected to "other sexual abuse." Thus, the second element would be present - the circumstance of the child would be that of being subjected to "other sexual abuse" and each act of the accused will be considered as the first element of lascivious conduct under Section 5(b) of RA 7610.

In this case, however, it was not alleged or proven that the child victim was exploited in prostitution or subjected to "other sexual abuse." As it is fundamental that every element of the crime must be alleged in the complaint or information against the accused, there is no basis to convict Quimvel for violation of Section 5(b) of RA 7610. This Court has held:

> The issue on how the acts or omissions constituting the offense should be made in order to meet the standard of sufficiency has long been settled. It is fundamental that every element of which the offense is composed must be alleged in the information. **No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged.** Section 6, Rule 110 of the Revised Rules of Court requires, *inter alia*, that the information must state the acts or omissions so complained of as constitutive of the offense. Recently, this Court emphasized that the test in determining whether the information validly charges an offense is whether the material facts alleged in the complaint or information will establish the essential elements of the offense charged as defined in the law. In this examination, matters *aliunde* are not considered. The law essentially requires this to enable the accused suitably to prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense.[6] (Boldfacing and underscoring supplied)

The second element of Section 5(b) of RA 7610 was not clearly and accurately alleged against Quimvel, and there was also no allegation of any , material fact that would establish the element that the child was exploited in prostitution or subjected to "other sexual abuse." The Information reads:

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[6] *Dela Chica v. Sandiganbayan,* 462 Phil. 712,719 (2003). citations omitted.

AMENDED INFORMATION

The Undersigned Assistant City Prosecutor of Ligao City hereby accuses EDUARDO QUIMVEL y BRAGA also known as EDWARD/ EDUARDO QUIMVEL y BRAGA of the crime of Acts of Lasciviousness in relation to Section 5(b) of R.A. No. 7610, committed as follows:

That on or about 8 o'clock in the evening of July 18, 2007 at Palapas, Ligao City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, through force and intimidation, did then and there, willfully, unlawfully and feloniously, insert his hand inside the panty of [AAA], a minor of 7 years old and mash her vagina, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.

Clearly, there is no allegation in the Information that the victim was exploited in prostitution or subjected to other sexual abuse.

The element that the child was exploited in prostitution or subjected to other sexual abuse increases the penalty from *prision correccional* to *reclusion temporal* in its medium period if the victim is under 12 years old. This element distinguishes whether the crime would be punishable under RA 7610 or under the RPC. Thus, there is a need to strictly construe this element. The Court has been consistent in strictly interpreting elements in criminal cases which would increase the penalty against the accused. In *People v. Orilla*, the Court stated that "when the law or rules specify certain circumstances that can aggravate an offense or qualify an offense to warrant a greater penalty, **the information must allege such circumstances and the prosecution must prove the same to justify the imposition of the increased penalty**."[7] In this case, however, the Information was silent on whether the victim was exploited in prostitution or was subjected to other sexual abuse, and it was also not proven by the prosecution during the trial of the case.

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[7] 467 Phil. 253 (2004), citing *People v. Corral,* 446 Phil. 562 (2003).

However, the Information is sufficient to charge the accused for acts of lasciviousness under Article 336 of the RPC, in accordance with the variance doctrine under the Rules of Court.[8] While the circumstance of the child as a child exploited in prostitution or subjected to "other sexual abuse" was not alleged or proven, all the elements of Article 336 of the RPC were clearly and accurately alleged in the Information, and thereafter proven during the course of the trial.

Accused Quimvel put his hand inside the undergarment of the child while the latter was sleeping, and rubbed her vagina which is an obvious act of lasciviousness or lewdness. I note that the words "force and intimidation" were used in the Information, which is the same wording as the element in acts of lasciviousness under Article 336 of the RPC. Moreover, the victim was only 7 years old when the incident happened. The victim being a child under 12 years old, all the elements of Article 336 of the RPC were sufficiently alleged in the Information and subsequently proven beyond reasonable doubt during the trial of the case.

ACCORDINGLY, I vote to **GRANT** the petition and to **CONVICT** Eduardo Quimvel y Braga for acts of lasciviousness under Article 336 of the Revised Penal Code and to impose on him the penalty of *prision correccional* in its medium period there being no aggravating or mitigating circumstances.

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[8] Section 4, in relation to Section 5, Rules 120 of the Rules of Criminal Procedure, provides:

SEC. 4. *Judgment in case of variance between allegation and proof*.– Whenthere is a variance between of offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accuse shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

SEC. 5. *When an offense includes or is included in another*.– An offense charged necessity includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

DISSENTING OPINION

CAGUIOA, *J.*:

The People's evidence show that: 7-year-old AAA lived with her father and siblings in a house close to her grandfather's; accused Quimvel worked for AAA's grandfather as caretaker of ducks and lived in the grandfather's house; one evening, AAA was left alone with her siblings when her father left the house to buy kerosene; on that night, Quimvel brought a vegetable viand to AAA's house; whereupon, AAA asked Quimvel to stay with her and her siblings because they were afraid; Quimvel acceded; *AAA **fell asleep** and **awakened** to Quimvel's leg over her body and his hand being inserted into her shorts, then caressing her vagina*; she removed Quimvel's hand from inside her shorts; Quimvel left just as AAA's father arrived.

Quimvel was indicted for the crime of acts of lasciviousness in relation to Section 5(b) of Republic Act No. 7610 (RA 7610).[1] He was convicted by the Regional Trial Court (RTC) and sentenced to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* in its medium period as minimum to fifteen (15) years, six (6) months and nineteen (19) days of *reclusion temporal* in its medium period as maximum.[2] The Court of Appeals (CA) affirmed the conviction.[3]

On petition for review on *certiorari* before this Court, Quimvel asserts that the prosecution failed to prove his guilt beyond reasonable doubt, and that assuming that he is guilty, he could only be convicted of acts of lasciviousness under Article 336 of the Revised Penal Code (RPC) and not in relation to Section 5(b) of RA 7610.[4]

The *ponencia* affirms his conviction for acts of lasciviousness in relation to Section 5(b).

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[1] Decision, p. 2.

[2] Decision, p. 3.

[3] With modification as to the amount of damages; Decision, p. 4.

[4] Decision, p. 4.

I dissent. The majority opinion's interpretation of Section 5(b) of RA 7610 effectively repeals Articles 226-A and 336 with respect to offended parties who are under twelve (12) years old. Moreover, its cavalier treatment of the concepts of "force or intimidation" and "coercion or influence" muddles the essential elements of what are otherwise separate and distinct offenses punished under Article 336 and Section 5(b).

The evidence establishes that no money, profit or other consideration and no coercion or influence attended AAA's sexual abuse.

The definition of a child exploited in prostitution or subjected to other sexual abuse is provided by Section 5 of RA 7610, namely: as a child, who (a) for money, profit or other consideration, or (b) due to coercion or influence by an adult, group, or syndicate, indulges in sexual intercourse or lascivious conduct.

There is no question that the sexual abuse of AAA was not for money, profit or other consideration. There is also no dispute that there was no coercion or influence exerted on AAA by Quimvel or any other person for the simple reason that the act of lasciviousness (*i.e.,* caressing her vagina) was done while she was asleep. On this score alone, it is easy to see that AAA does not fall in the definition of a child exploited in prostitution or subjected to other sexual abuse. Accordingly, the evidence negates the application of Section 5(b).[5]

Thus, as far as Quimvel is concerned, he can only be convicted of acts of lasciviousness under Article 336 in relation to Article 266-A(d) of the RPC and meted the penalty only of *prision correccional*. Hence, in disposing of this case, there really is no need to further discuss the nuances of the proper application of Section 5(b) of RA 7610. Nevertheless, I submit this dissent on the different issues that have been made a part of the majority decision.

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[5] See *People v. Abello*, 601 Phil. 373, 393 (2009); an extended discussion of *Abello* is found in pages 9-10.

RA 7610 was not intended to cover all sexual abuses against children.

At the outset, I join Justice Carpio's observation that if the intention of RA 7610 is to penalize all sexual abuses against children under its provisions to the exclusion of the RPC, it would have expressly stated so and would have done away with the qualification that the child be "exploited in prostitution or subjected to other sexual abuse."[6] It did not.

When the statute speaks unequivocally, there is nothing for the courts to do but to apply it. Section 5(b) is a provision of specific and limited application, and must be applied as worded — a separate and distinct offense from the "common" or "ordinary" acts of lasciviousness under Article 336 of the RPC.

Upon the premise that the language of Section 5(b) is ambiguous and is susceptible to interpretation, I have conscientiously studied the deliberations of RA 7610 to ascertain the intent of the law with respect to how it would interplay with the provisions of the RPC and other laws that penalize the same or similar acts.

While the Senate, in its deliberations, would appear to equivocate in the protection of children against all or specific types of abuse, it cannot be escaped that the overriding impetus for the passage of the law is based on a certain recurring theme. Senator Rasul, one of RA 7610's sponsors, in her speech, stated:

Senator Rasul. x x x

x x x x x x x x x

But undoubtedly, the most disturbing, to say the least, is the persistent report of children being sexually exploited and molested for purely material gains. Children with ages ranging from three to 18 years are used and abused. We hear and read stories of rape, manhandling and sexual molestation in the hands of cruel sexual perverts, local and foreigners alike. As of October 1990, records show that 50 cases of physical abuse were reported, with the ratio of six females to four males. x x x

[6] *J.* Carpio Separate Opinion, p. 5.

x x x x x x x x x

x x x No less than the Supreme Court, in the recent case of *People vs. Ritter*, held that **we lack criminal laws which will adequately protect streetchildren from exploitation by pedophiles**. x x x[7]

The case referred to by Senator Rasul, *People v. Ritter*,[8] is a 1991 case which involved an Austrian national who was charged with rape with homicide for having ultimately caused the death of Rosario, a street child, by inserting a foreign object into her vagina during the course of performing sexual acts with her. Ritter was acquitted based on reasonable doubt on account of, among others, the failure of the prosecution to (1) establish the age of Rosario to be within the range of statutory rape, and (2) show force or intimidation as an essential element of rape in the face of the finding that Rosario was a child prostitute who willingly engaged in sexual acts with Ritter.

Constrained to acquit Ritter, the Court made the following pronouncements:

It is with distressing reluctance that we have to seemingly set back the efforts of Government to dramatize the death of Rosario Baluyot as a means of galvanizing the nation to care for its street children. It would have meant a lot to social workers and prosecutors alike if one pedophile-killer could be brought to justice so that his example would arouse public concern, sufficient for the formulation and implementation of meaningful remedies. However, we cannot convict on anything less than proof beyond reasonable doubt. The protections of the Bill of Rights and our criminal justice system are as much, if not more so, for the perverts and outcasts of society as they are for normal, decent, and law-abiding people.

x x x x x x x x x

And finally, **the Court deplores the lack of criminal laws which will adequately protect street children from exploitation by pedophiles, pimps, and, perhaps, their own parents or**

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[7] Record of the Senate, Vol. III, No. 104, March 19, 1991, p. 1204; emphasis and underscoring supplied.

[8] 272 Phil. 532 (1991).

guardians who profit from the sale of young bodies. The provisions on statutory rape and other related offenses were never intended for the relatively recent influx of pedophiles taking advantage of rampant poverty among the forgotten segments of our society. Newspaper and magazine articles, media exposes, college dissertations, and other studies deal at length with this serious social problem but pedophiles like the appellant will continue to enter the Philippines and foreign publications catering to them will continue to advertise the availability of Filipino street children unless the Government acts and acts soon. We have to acquit the appellant because the Bill of Rights commands us to do so. We, however, express the Court's concern about the problem of street children and the evils committed against them. Something must be done about it.[9]

That the protection of street children from exploitation is the thrust of RA 7610 is further confirmed by Senator Lina's elucidation on the application of Section 6 following questions from Senator Enrile:

Senator Enrile. Pareho silang hubad na hubad at naliligo. Walang ginagawa. Walang touching po, basta naliligo lamang. Walang akapan, walang touching, naliligo lamang sila. Ano po ang ibig sabihin noon? Hindi po ba puwedeng sabihin, kagaya ng standard na ginamit natin, na UNDER CIRCUMSTANCES WHICH WOULD LEAD A REASONABLE PERSON TO BELIEVE THAT THE CHILD IS ABOUT TO BE SEXUALLY EXPLOITED, OR ABUSED.

Senator Lina. Kung mayroon pong balangkas or amendment to cover that situation, tatanggapin ng Representation na ito. Baka ang sitwasyong iyon ay hindi na ma-cover nito sapagkat, at the back of our minds, Mr. President, **ang sitwasyong talagang gusto nating ma-address ay maparusahan iyong tinatawag na "pedoph[i]lia" or prey on our children**. Hindi sila makakasuhan sapagkat their activities are undertaken or are committed in the privacy of homes, inns, hotels, motels and similar establishments.[10]

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[9] *Id.* at 563-564, 569-570; emphasis and underscoring supplied.

[10] Record of the Senate, Vol. I, No. 7, August 1, 1991, pp. 264-265; emphasis and underscoring supplied.

And when he explained his vote, Senator Lina stated the following:

> With this legislation, child traffickers could be easily prosecuted and penalized. Incestuous abuse and those where victims are under twelve years of age are penalized gravely, ranging from *reclusion temporal* to *reclusion perpetua*, in its maximum period. **It also imposes the penalty of *reclusion temporal in its medium period to reclusion perpetua*,** equivalent to a 14-30 year prison term **for those:** "(a) who promote or facilitate child prostitution; (b) **commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution**; (c) derive profit or advantage whether as manager or owner of an establishment where the prostitution takes place or of the sauna, disco, bar resort, place of entertainment or establishment serving as a cover or which engages in a prostitution in addition to the activity for which the license has been issued to said establishment.[11]

The Senate deliberations on RA 7610 is replete with similar disquisitions tending to show the intendment to make the law applicable to cases involving child exploitation through prostitution, sexual abuse, child trafficking, pornography and other types of abuses; the passage of the law was the Senate's act of heeding the call of the Supreme Court to afford protection to a special class of children and not to cover any and all crimes against children that are already covered by other penal laws such as the RPC and the Child and Youth Welfare Code.

The structure of RA 7610 confirms the foregoing intendment.

In this regard, even the structure of RA 7610 demonstrates its intended application.

Article I lays the preliminaries including state policy and defines the terms used in the statute. Article II mandates the creation of a comprehensive program to protect children from sexual abuse, exploitation, and discrimination — and thereafter enumerated the headings of subsequent articles that grouped

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[11] Record of the Senate, Vol. II, No. 58, December 2, 1991, pp. 793-794; emphasis and underscoring supplied.

prohibited acts according to the classes of abuse that RA 7610 penalizes. Article III penalizes child prostitution and other sexual abuse; Article IV, child trafficking; Article V, obscene publications and indecent shows; Article VI, other acts of abuse; and Article VII for sanctions for establishments wherein these prohibited acts are promoted, facilitated or conducted. The remaining articles cover circumstances which gravely threaten or endanger the survival and normal development of children.

By both literal and purposive tests, I find nothing in the language of the law or in the Senate deliberations that necessarily leads to the conclusion that RA 7610 subsumes all instances of sexual abuse against children.

The language of Section 5(b) cannot be read in isolation and should be read in the context of the intendment of RA 7610.

Section 5(b) reads:

SEC. 5. *Child Prostitution and Other Sexual Abuse*. — Children, whether male or female, who for money, profit, or any other consideration or *due to the coercion or influence of any adult*, syndicate or group, indulge in sexual intercourse or *lascivious conduct*, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x x x x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period x x x.[12]

[12] Underscoring supplied.

Its essential elements are: (1) The accused commits the act of sexual intercourse or *lascivious conduct;* (2) The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) The child whether male or female, is below 18 years of age.[13]

The unique circumstances of the children exploited in prostitution or subjected to other sexual abuse for which the provisions of RA 7610 are intended are highlighted in this exchange:

The Presiding Officer [Senator Mercado]. Senator Pimentel.

Senator Pimentel. Just this question, Mr. President, if the Gentleman will allow.

Will this amendment[14] also affect the Revised Penal Code provisions on seduction?

Senator Lina. No, Mr. President. Article 336 of Act No. 3815 will remain unaffected by this amendment we are introducing here. **As a backgrounder, the difficulty in the prosecution of so-called "pedophiles" can be traced to this problem of having to catch the malefactor committing the sexual act on the victim.** And those in the law enforcement agencies and in the prosecution service of the Government have found it difficult to prosecute. Because if an old person, especially a foreigner, is seen with a child with whom he has no relation—blood or otherwise—and they are just seen in a room and there is no way to enter the room and to see them in *flagrante delicto*, then it will be very difficult for the prosecution to charge or to hale to court these pedophiles.

So, we are introducing into this bill, Mr. President, an act that is considered already an attempt to commit child prostitution. **This, in no way, affects the Revised Penal Code provision on acts of lasciviousness or qualified seduction.**[15]

As to the proviso of Section 5(b), some guidance may be had as to its import during the period of committee amendments:

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[13] *People v. Abello*, *supra* note 5, at 392.

[14] N.B. On the provisions relating to attempt to commit child prostitution.

[15] Record of the Senate, Vol. IV, No. 116, May 9, 1991, pp. 334-335; emphasis and underscoring supplied.

Senator Lina. On page 3, between lines 12 and 13, insert the following: PROVIDED THAT WHEN THE VICTIM IS TWELVE (12) YEARS OR LESS, THE PERPETRATORS SHALL BE PROSECUTED UNDER ARTICLE 335, PARAGRAPH 3, AND ARTICLE 336 OF REPUBLIC ACT 3815, AS AMENDED, THE REVISED PENAL CODE, FOR RAPE OR LASCIVIOUS CONDUCT AS THE CASE MAY BE.

The Presiding Officer [Senator Mercado]. Is there any objection? [*Silence*] Hearing none, the amendment is approved.

x x x x x x x x x

Senator Lina. No, Mr. President, as stated in the Committee amendment which has just been approved but which, of course, can still stand some individual amendments during the period of individual amendment, it is stated that, "PROVIDED, THAT WHEN THE VICTIM IS TWELVE (12) YEARS OR LESS, THE PERPETRATOR SHALL BE PROSECUTED UNDER ARTICLE 335, PAR. 3, AND ARTICLE 336 OF R.A. 3815, AS AMENDED."

Article 335 of the Revised Penal Code, Mr. President, is, precisely, entitled: "When And How Rape Is Committed." So, prosecution will still be under Article 335, when the victim is 12 years old or below.

Senator Pimentel. Despite the presence of monetary considerations?

Senator Lina. Yes, Mr. President. It will still be rape. We will follow the concept as it has been observed under the Revised Penal Code. Regardless of monetary consideration, regardless of consent, the perpetrator will still be charged with statutory rape.

Senator Pimentel. So, it is only when the victim or the child who was abused is a male that the offender would probably be prosecuted under the distinguished Gentleman's amendment because, obviously, the crime of rape does not cover child abuse of males.

Senator Lina. Yes, that will be the effect, Mr. President.

Senator Pimentel. Thank you, Mr. President.[16]

Bearing these in mind, there is no disagreement as to the first and third elements of Section 5(b). The core of the discussion

[16] *Id.* at 333-334.

relates to the meaning of the second element — that the said act is performed with a child exploited in prostitution or subjected to other sexual abuse.

To my mind, a person can only be convicted of violation of Article 336 in relation to Section 5(b), upon allegation and proof of the unique circumstances of the child — that he or she is exploited in prostitution or subject to other sexual abuse. In this light, I quote in agreement Justice Carpio's dissenting opinion in *Olivarez v. Court of Appeals*[17]:

> Section 5 of RA 7610 deals with a situation where the acts of lasciviousness are committed on a child already either exploited in prostitution or subjected to "**other sexual abuse**." Clearly, the acts of lasciviousness committed on the child are separate and distinct from the **other** circumstance — that the child is either exploited in prostitution or subjected to "**other sexual abuse**."
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> x x x x x x x x x
>
> Section 5 of RA 7610 penalizes those "who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse." The act of sexual intercourse or lascivious conduct may be committed on a child **already exploited in prostitution**, whether the child engages in prostitution for profit or someone coerces her into prostitution against her will. The element of profit or coercion refers to the practice of prostitution, not to the sexual intercourse or lascivious conduct committed by the accused. A person may commit acts of lasciviousness even on a prostitute, as when a person mashes the private parts of a prostitute against her will.
>
> The sexual intercourse or act of lasciviousness may be committed on a child **already subjected to other sexual abuse**. The child may be subjected to such **other** sexual abuse for profit or through coercion, as when the child is employed or coerced into pornography. A complete stranger, through force or intimidation, may commit acts of lasciviousness on such child in violation of Section 5 of RA 7610.
>
> The phrase "**other sexual abuse**" plainly means that the child is already subjected to sexual abuse **other** than the crime for which the

[17] 503 Phil. 421 (2005).

accused is charged under Section 5 of RA 7610. The "**other sexual abuse**" is an element separate and distinct from the acts of lasciviousness that the accused performs on the child. The majority opinion admits this when it enumerates the second element of the crime under Section 5 of RA 7610 — that the lascivious "act is performed with a child x x x subjected to other sexual abuse."[18]

In its bare essentials, the second element can be met by allegation and proof of either circumstance:

a) the child is exploited in prostitution; OR

b) the child is subjected to other sexual abuse.

which should already be existing at the time of sexual intercourse or lascivious conduct complained of.

Otherwise stated, in order to impose the higher penalty provided in Section 5(b) as compared to Article 336, it must be alleged and proved that the child — (1) for money, profit, or any other consideration or (2) due to the coercion or influence of any adult, syndicate or group — indulges in sexual intercourse or lascivious conduct.

In *People v. Fragante*,[19] the accused was convicted of seven (7) counts of acts of lasciviousness and one (1) count of rape committed against his own minor daughter. The Court found that the elements of Section 5(b) were present. Remarkably, the Court meticulously explained the interplay of the elements of rape and acts of lasciviousness and Section 5(b).

It held that actual force or intimidation need not be employed in incestuous rape of a minor because the moral and physical dominion of the father is sufficient to cow the victim into submission.[20] The appreciation of how the sexual intercourse and lascivious conduct in this case fell within the ambit of Section 5(b) is cogently explained thus: appellant, as a father having moral

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[18] *Id*. at 445-447; italics omitted, emphasis supplied.

[19] 657 Phil. 577 (2011).

[20] *Id*. at 592.

ascendancy over his daughter, coerced AAA to engage in lascivious conduct, which is within the purview of sexual abuse.[21]

In *People v. Abello*,[22] one of the reasons the accused was convicted of rape by sexual assault and acts of lasciviousness and penalized under the RPC and not under Section 5(b) was because there was no showing of coercion or influence required by the second element. The Court ratiocinated:

> In *Olivarez v. Court of Appeals*, we explained that the phrase, "other sexual abuse" in the above provision covers not only a child who is abused for profit, but also one who engages in lascivious conduct **through the coercion or intimidation** by an adult. In the latter case, there must be some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's will.
>
> In the present case, **the prosecution failed to present any evidence showing that force or coercion attended Abello's sexual abuse on AAA; the evidence reveals that she was asleep** at the time these crimes happened and only awoke when she felt her breasts being fondled. Hence, she could have not resisted Abello's advances as she was unconscious at the time it happened. In the same manner, there was also no evidence showing that Abello compelled her, or cowed her into silence to bear his sexual assault, after being roused from sleep. Neither is there evidence that she had the time to manifest conscious lack of consent or resistance to Abello's assault.[23]

Prior sexual affront is not always required for Section 5(b) to apply.

That is not to say that in every instance, prior sexual affront upon the child must be shown to characterize the child as one "subjected to other sexual abuse". What is only necessary is to show that the child is already a child exploited in prostitution or subjected to other sexual abuse at the time the sexual intercourse or lascivious conduct complained of was committed or that circumstances obtain prior or during the first instance

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[21] *Id*. at 597.

[22] *Supra* note 5.

[23] *Id*. at 393; additional emphasis and underscoring supplied.

of abuse that constitutes such first instance of sexual intercourse or lascivious conduct as having converted the child into a child "exploited in prostitution or subjected to other sexual abuse."

I am, therefore, in full agreement with Justice Bernabe that alleging and proving the second element do not require a prior sexual affront;[24] precisely, because a prior sexual affront is not the only way to satisfy the second element.

It is in this light that I had, during the deliberations of this case, discussed the need to contextualize the operation of Section 5(b) in reference to Section 5(a) and the other parts of Section 5. I understand the structure of Section 5 as following the more common model or progression of child prostitution or other forms of sexual exploitation:

A child is procured, induced, or threatened to become a prostitute by any person, in violation of Section 5(a). In this instance, the person who has sexual intercourse or performs lascivious acts upon the child, even if this were the very first act by the child, already makes the person liable under Section 5(b), because the very fact that someone had procured the child to be used for another person's sexual gratification in exchange for money, profit or other consideration already qualifies the child as a child exploited in prostitution. In this instance, no requirement of a prior sexual affront is required.

In cases where any person, under the circumstances of Section 5(a), procures, induces, or threatens a child to engage in any sexual activity with another person, even without an allegation or showing that the impetus is money, profit or other consideration, the first sexual affront by the person to whom the child is offered already triggers Section 5(b) because the circumstance of the child being offered to another already qualifies the child as one subjected to other sexual abuse. Similar to these situations, the first sexual affront upon a child shown to be performing in obscene publications and indecent shows, or under circumstances falling under Section 6 is already a

[24] *J.* Bernabe Concurring Opinion, p. 3.

violation of Section 5(b) because these circumstances are sufficient to qualify the child as one subjected to other sexual abuse.

In certain cases, however, it appears that a first sexual affront, on its own, cannot be considered a violation of Section 5(b). For example, a person who has moral ascendancy or influence over a child cannot be automatically considered to have coerced or influenced the child into indulging in sexual intercourse or lascivious conduct with him on account only of his or her ascendancy over the child, unless there are circumstances that would allow the inference that the relationship between the perpetrator and the victim amounts to coercion or influence (*e.g.,* as when a person who has ascendancy over a child is later found with the child under the circumstances of Section 6, any subsequent sexual activity squarely violates Section 5(b), because the circumstances of Section 6 may be the basis to infer that the accused conducted his relationship with the child with the view of inducing him or her to indulge in sexual intercourse or lascivious conduct, thus furnishing the element of coercion or influence). Otherwise, it appears that without the circumstances of Section 5(a) or independent evidence of coercion or influence, a single instance of sexual intercourse or lascivious conduct may not be sufficient to meet the second element of Section 5(b). However, as with the "discrepancy" in the penalties,[25] this state of law should be addressed by remedial legislation, and not adjusted by the Court based on its own value judgment.

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[25] The President Pro Tempore noted this discrepancy in penalties during the deliberations, thus: "The penalty in the case of those who commit acts of lasciviousness is that they are punished under the Penal Code with merely *prision correccional*. That seems to be rather odd, because this is if the child, in the Penal Code, is less than 15, the penalty is higher or heavier. That is *reclusion temporal*, whereas, if the child is less than 12, it is only *prision correccional*." (Record of the Senate, Vol. II, No. 52, August 21, 1991, p. 605.)

***Larin* does not support the extension of Section 5(b) to all cases of lascivious conduct against a child.**

People v. Larin[26] has been used as jurisprudential support for the proposition that Section 5(b) applies to all instances of lascivious conduct against children because of the phrase "other consideration". *Larin's* use of this passage in the deliberations is oft-cited:

> *Senator Angara.* I refer to line 9, 'who for money or profit'. I would like to amend this, Mr. President, *to cover a situation where the minor may have been coerced or intimidated into this lascivious conduct, not necessarily for money or profit*, so that we can cover those situations and not leave loophole in this section.
>
> The proposal I have is something like this: WHO FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR *DUE TO THE COERCION OR INFLUENCE* OF ANY ADULT, SYNDICATE OR GROUP INDULGE, *et cetera.*
>
> *The President Pro Tempore.* I see. That would mean also changing the subtitle of Section 4. Will it no longer be child prostitution?
>
> *Senator Angara.* No, no. Not necessarily, Mr. President, because we are still talking of the child who is being misused for sexual purposes either for money or for consideration. What I am trying to cover is the other consideration. Because, here, it is limited only to the child being abused or misused for sexual purposes, only for money or profit.
>
> I am contending, Mr. President, that *there may be situations where the child may not have been used for profit* or . . .
>
> *The President Pro Tempore. So, it is no longer prostitution. Because the essence of prostitution is profit.*
>
> *Senator Angara. Well, the Gentleman is right. Maybe the heading ought to be expanded. But, still, the President will agree that that is a form or manner of child abuse.*

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[26] 357 Phil. 987 (1998).

The President Pro Tempore. What does the Sponsor say? Will the Gentleman kindly restate the amendment?

ANGARA AMENDMENT

Senator Angara. The new section will read something like this, Mr. President: MINORS, WHETHER MALE OR FEMALE, WHO FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP INDULGE IN SEXUAL INTERCOURSE, *et cetera.*

Senator Lina. It is accepted, Mr. President.

The President Pro Tempore. Is there any objection? [*Silence*] Hearing none, the amendment is approved.

How about the title, 'Child Prostitution,' shall we change that too?

Senator Angara. Yes, Mr. President, to cover the expanded scope.

The President Pro Tempore. Is that not what we would call probable 'child abuse'?

Senator Angara. Yes, Mr. President.

The President Pro Tempore. Subject to rewording. Is there any objection? [*Silence*] Hearing none, the amendment is approved. x x x[27]

While this amendment undoubtedly expanded the scope of Section 5(b) to include non-monetary consideration, this does not furnish support for the interpretation that all cases of sexual intercourse or lascivious conduct against a child should be prosecuted in relation to Section 5(b). Worthy of note are the following statements of Senator Angara who proposed the amendment:

The President Pro Tempore. I see. That would mean also changing the subtitle of Section 4. Will it no longer be child prostitution?

Senator Angara. No, no. Not necessarily, Mr. President, because we are still talking of the child who is being misused for sexual purposes either for money or for consideration. What I am trying to cover is the other consideration. Because, here, it is limited only to the child being abused or misused for sexual purposes, only for money or profit.

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[27] *Id.* at 998-999.

I am contending, Mr. President, that there may be situations where the child may not have been used for profit or . . .

The President Pro Tempore. So, it is no longer prostitution. Because the essence of prostitution is profit.

Senator Angara. Well, the Gentleman is right. Maybe the heading ought to be expanded. But, still, the President will agree that that is a form or manner of child abuse.

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Senator Lina. It is accepted, Mr. President.

The President Pro Tempore. Is there any objection? [*Silence*] Hearing none, the amendment is approved.[28]

That *Larin's* crime is subsumed in Section 5(b) is not doubted. However, the reliance on this passage in the Senate deliberations cannot be used to extend the application of Section 5(b) beyond what is expressly stated by its provisions.

In *Larin*, the Court held that the elements of Section 5(b) are present. Larin, being an adult and the swimming trainor of his 14-year-old victim, had the influence and ascendancy to cow her into submission. Evidence was introduced to show that Larin employed psychological coercion upon his child victim by attacking her self-esteem and then pretending to be attentive to her needs and making himself out to be the only one who could accept her inadequacies.

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[28] Record of the Senate, Vol. I, No. 7, August 1, 1991, p. 262; emphasis and underscoring supplied.

The independent proof given of psychological coercion, prior to the first lascivious conduct against the child victim, coupled with the fact that the lascivious conduct happened on two separate occasions indubitably proved the second element — that the child victim was coerced or influenced by Larin to engage in lascivious conduct at the first instance of lascivious conduct, or, to be sure, on the second instance of lascivious conduct (as the first was already sufficient to convert the child victim into a child exploited in prostitution or subjected to other sexual abuse).

Verily, this factual milieu sufficiently places *Larin* within the ambit of Section 5(b) because of coercion and influence and not because of "other consideration." The relationship and the manner of committing the lascivious conduct in *Larin* distinguish it from the facts of Quimvel.

Understanding the last proviso of Section 5(b).

It has been submitted that the interpretation of the final proviso of Section 5(b) imposing *reclusion temporal* in its medium period if the child is under twelve (12) years old should be made to depend only on the proviso preceding it.[29] The practical effect of this submission is that whenever the victim of lascivious conduct is any child under twelve (12) years of age, the prosecution shall be under Article 336 of the RPC and the penalty automatically becomes *reclusion temporal*.

I disagree. True, the office of the proviso is to qualify or modify only the phrase immediately preceding it or restrains or limits the generality of the clause that immediately follows. As applied to Section 5(b), the understanding of the last proviso should not lose sight of the fact that what it qualifies is another proviso, which also operates only within the meaning of the phrase preceding the latter:

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other

[29] *J.* Peralta Separate Opinion.

sexual abuse; *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period[.]

Therefore, I submit that the proper understanding of Section 5(b) with both provisos in operation would be: in prosecutions for lascivious conduct under Article 336 when the victim is (1) a child exploited in prostitution or subjected to other sexual abuse, **AND** (2) under twelve (12) years old, the penalty would be *reclusion temporal* in its medium period.

In this context, it cannot be said that the penalty for all prosecutions for lascivious conduct under Article 336 is *reclusion temporal* in its medium period. As it should be, prosecution for acts of lasciviousness that do not involve a child exploited in prostitution or subjected to other sexual abuse even if she were under twelve (12) years old, the penalty should — as it should be meted on Quimvel — be the penalty provided in the RPC, which is *prision correccional*.

Section 5(b), as worded and as intended, is a small subset of the universe of lascivious conduct covered by Article 336, thereby requiring allegation and proof of the specific circumstances required for it to operate — which, put simply, are composed of its essential elements.

RA 7610 did not repeal Article 336.

In this light, I concur with the majority that Article 336 remains an operative provision, and the crime of acts of lasciviousness under the RPC remains a distinct and subsisting crime from RA 7610. While rape was relocated to the title on crimes against persons, Article 336 can fairly be read to refer to the provision that replaced Article 335 (Article 266) to save it from becoming non-operational.

The legislative intent to have the provisions of RA 7610 to operate ***side by side*** with the provisions of the RPC — and a

recognition that the latter remain effective — can be gleaned from Section 10 of the law:

Section 10. ***Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development.*** –

(a) Any person who shall commit **any other acts of child abuse, cruelty or exploitation** or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, **but not covered by the Revised Penal Code, as amended**, shall suffer the penalty of prision mayor in its minimum period.

This is confirmed by Senator Lina in his sponsorship speech of RA 7610, thus:

Senator Lina. x x x

x x x x x x x x x

Senate Bill No. 1209, Mr. President, is intended to provide stiffer penalties for abuse of children and to facilitate prosecution of perpetrators of abuse. **It is intended to complement provisions of the Revised Penal Code where the crimes committed are those which lead children to prostitution and sexual abuse, trafficking in children and use of the young in pornographic activities**.

These are the three areas of concern which are specifically included in the United Nations Convention o[n] the Rights of the Child. As a signatory to this Convention, to which the Senate concurred in 1990, our country is required to pass measures which protect the child against these forms of abuse.

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Mr. President, this bill on providing higher penalties for abusers and exploiters, setting up legal presumptions to facilitate prosecution of perpetrators of abuse, and **complementing the existing penal provisions** of crimes which involve children below 18 years of age is a part of a national program for protection of children.

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Mr. President, subject to perfecting amendments, I am hopeful that the Senate will approve this bill and thereby add to the growing program for special protection of children and youth. We need this

measure to deter abuse. We need a law to prevent exploitation. We need a framework for the effective and swift administration of justice for the violation of the rights of children.[30]

This same deference to the discreteness and subsistence of the felonies in the RPC is apparent in this interpellation with respect to seduction:

Senator Lina. This is qualified seduction. Simple seduction is seduction of a woman who is single or a widow of good reputation over 12, but under 18 years of age, committed by means of deceit. Here the subject is a woman.

In our proposal, it will be both male and female. But that is not the only difference, Mr. President. The situation that we would like to cover that will lead to easier prosecution and to overcome this present problem of government enforcement agencies in booking or charging an alleged so-called "pedophile" is that we want the fact of being present, say, inside a hotel, sauna, or an inn, between the presence of a person without any relationship with a child under 18 years of age and there is no sexual contact. It is not proved that there is sexual contact. There is no need for proof of lewd design. The fact that they are there will be considered an attempt to commit child prostitution.

We are, in effect, advancing a new concept or theory, Mr. President, to cover this gap in our present statutes, making it easier or making it difficult for the prosecution to hale to court this so-called "pedophile." **So, this is different from consented abduction, qualified seduction or simple deduction.**[31]

Force or intimidation does not equate to coercion or influence.

Since Section 5(b) penalizes a specific class of lascivious conduct, I cannot concur with the *ponencia* when it states that the element of coercion or influence under Section 5(b) was

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[30] Record of the Senate, Vol. IV, No. 111, April 29, 1991, pp. 191-193; emphasis and underscoring supplied.

[31] Record of the Senate, Vol. IV, No. 116, May 9, 1991, pp. 335-336; emphasis and underscoring supplied.

met by the allegation in the Information of force and intimidation — an element of Article 336.

"Common" or "ordinary" acts of lasciviousness under Article 336 and lascivious conduct under Article 336 in relation to Section 5(b) are separate offenses, with distinct essential elements. To hold that the allegation and proof of the existence of an element of one can take the place of what has been jurisprudentially defined as an element of another muddles the understanding of these two offenses, and effectively constitutes judicial legislation as it results in a partial repeal of Article 336 through a change of its essential elements.

The essential elements of acts of lasciviousness under Article 336 of the RPC are as follows:

1. That the offender commits any act of lasciviousness or lewdness;
2. That the act of lasciviousness is committed against a person of either sex;
3. That it is done under any of the following circumstances:
    a. *By using force or intimidation*; or
    b. When the offended party is deprived of reason or otherwise unconscious; [or]
    c. By means of fraudulent machination or grave abuse of authority; or
    d. When the offended party is under 12 years of age or is demented. (Italics supplied)[32]

On the other hand, Section 5(b)'s essential elements are as follows:

1. The accused commits the act of sexual intercourse or *lascivious conduct.*
2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.

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[32] Dissenting Opinion of *J.* Carpio in *Olivarez v. Court of Appeals, supra* note 17, at 442-443.

3. The child, whether male or female, is below 18 years of age.[33]

The muddling is made even more inopportune by the fact that the people's evidence shows neither force or intimidation, nor coercion or influence employed by Quimvel upon AAA. Quimvel took advantage of the fact that AAA was asleep, committed lascivious conduct upon her, and forthwith ceased when she awoke and removed his hand from within her shorts — her being asleep a circumstance properly belonging to being unconscious.

However, even as the Information alleged the use of force or intimidation, the evidence established only that AAA was unconscious or asleep; meaning that Quimvel could not be convicted of Section 5(b) but could be convicted only of Article 336.

It has been argued that neither force or intimidation nor coercion or influence need be shown if the offended party is a child under twelve (12) years old. This proposition is correct IF the prosecution is for Articles 266-A or 336, as the age of the offended party is a circumstance that, on its own, already satisfies the conditions of Articles 266-A and 336. However, I maintain that in a prosecution under Section 5(b), coercion or influence (or otherwise, that the child indulged in sexual intercourse or lascivious conduct for money, profit or other consideration) is a textually-provided circumstance that must be separately shown apart from the age of the child victim.

Issues of operationalization.

A challenge to this interpretation has been articulated that the requirement of showing what Justice Carpio calls as the "circumstances of the child" is difficult to operationalize.[34] I disagree. The circumstances of the child can be proved in any manner allowed by the Rules of Court, as by testimony of the child himself or herself, or any other person who has personal

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[33] *People v. Fragante*, *supra* note 19, at 596, citing *People v. Abello*, *supra* note 5, at 392, further citing *People v. Larin, supra* note 26, at 997; *Amployo v. People,* 496 Phil. 747, 758 (2005); *Olivarez v. Court of Appeals, supra* note 17, at 431 and 444; and *Malto v. People*, 560 Phil. 119, 134 (2007).

[34] *J.* Bernabe Concurring Opinion.

knowledge of the child's circumstances. Ultimately, if difficulty is encountered in operationalizing a provision — in terms of evidence required — it is within the province of the Court to lay down guidelines in appreciating a fact as an element of the crime or as a qualifying circumstance, as it had done in *People v. Pruna*[35] as to the question of proving a victim's age.

In view of the foregoing discussion, Section 5(b), to my mind, is, as earlier intimated, correctly understood to be a subset of the universe of acts of lasciviousness covered by Article 336, thereby requiring allegation and proof of the specific circumstances required for it to operate — which, again, are simply composed of its essential elements.

The Court's role is to punish the guilty with the penalty provided by law for the offense proved by the People's evidence. While I share the sentiment that the highest degree of protection must be afforded to children, I am mindful of the fact that, as far as this protection is equated to the proper penalty upon persons that offend against children, the extent of this protection only goes as far as the law can be reasonably and equitably interpreted to allow.

It is in this light that I cannot join the majority in imposing the higher penalty of *reclusion temporal* as provided in RA 7610, despite the fact that I stand with the rest of the members of the Court in absolute condemnation of the abuse committed against the child victim.

Recapitulation.

A dispassionate evaluation of the evidence shows that what the prosecution only proved were the essential elements of Article 336: that (1) Quimvel committed an act of lasciviousness or lewdness by caressing AAA's vagina; (2) he committed the said act against AAA; and (3) the said act was done while AAA, a 7-year-old, was asleep.

I vote to convict Quimvel only of acts of lasciviousness and impose upon him the penalty of *prision correccional* under Article 336 of the RPC**.**

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[35] *People v. Pruna,* 439 Phil. 440 (2002).

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[G.R. No. 216538. April 18, 2017]

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

[G.R. No. 216954. April 18, 2017]

ALFREDO C. ANTONIO, RUBEN O. FRUTO and CESAR M. DRILON, JR., *petitioners, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; DUE PROCESS; WHAT IS SOUGHT TO BE SAFEGUARDED IN THE APPLICATION OF THE GUARANTEE OF DUE PROCESS IS NOT THE LACK OF PREVIOUS NOTICE BUT THE DENIAL OF THE OPPORTUNITY TO BE HEARD.— [T]he essence of due process is simply the opportunity to be heard or, as applied to administrative proceedings, the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. In the application of the guarantee of due process, indeed, what is sought to be safeguarded is not the lack of previous notice but the denial of the opportunity to be heard. As long as the party was afforded the opportunity to defend his interests in due course, he was not denied due process.

2. ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO THE SPEEDY DISPOSITION OF CASES; WHEN VIOLATED.— The right [to the speedy disposition of cases] requires that proceedings should be conducted according to fixed rules, free from vexatious, capricious, and oppressive delays. The right is violated when unjustified postponements of the proceedings are sought and obtained, or when a long period of time is allowed without justifiable cause or motive to elapse without the parties having their case tried. Yet, none of such circumstances was attendant herein.

3. ID.; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); IN RECOGNITION OF THE COA'S EXPERTISE IN THE IMPLEMENTATION OF THE LAWS IT HAS BEEN ENTRUSTED TO ENFORCE, THE SUPREME COURT MAY ONLY INTERVENE WITH ITS ACTIONS IF IT ACTS WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.— The Constitution vests enough latitude in the COA, as the guardian of public funds, to determine, prevent and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government fund. The COA is thus accorded the complete discretion to exercise its constitutional duty. To accord with such constitutional empowerment, the Court generally sustains the COA's decisions in recognition of its expertise in the implementation of the laws it has been entrusted to enforce. Only if the COA acts without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may the Court intervene and correct the COA's actions. For this purpose, grave abuse of discretion means that there is on the part of the COA an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, such as when the assailed decision or resolution rendered is not based on law and the evidence but on caprice, whim and despotism.

4. ID.; STATUTES; STATUTORY CONSTRUCTION; WHEN THE WORDS AND PHRASES OF THE STATUTE ARE CLEAR AND UNEQUIVOCAL, THEIR MEANING MUST BE DETERMINED FROM THE LANGUAGE EMPLOYED AND THE STATUTE MUST BE TAKEN TO MEAN EXACTLY WHAT IT SAYS.— The car fund was limited to the acquisition of the brand new motor vehicles to be leased or sold to eligible officers. That purpose could not be expanded to DBP's granting of multi-purpose loans to its officers-availees and to investing the car funds in money market placements and trust instruments even if doing so was aimed at aiding its officers-availees in their acquisition of motor vehicles. The interpretation being advocated by the petitioners, even if it aligned with the organic purpose of the establishment of the MVLPP, could not be countenanced. It is an elementary rule

in statutory construction that when the words and phrases of the statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says. The courts may not speculate as to the probable intent of the framers of the law especially when the law is clear.

5. ID.; ID.; PRESIDENTIAL DECREE NO. 1445 (THE GOVERNMENT AUDITING CODE OF THE PHILIPPINES); TRUST FUNDS; SHALL BE AVAILABLE AND MAY BE SPENT ONLY FOR THE SPECIFIC PURPOSE FOR WHICH THE TRUST WAS CREATED OR THE FUNDS RECEIVED.— DBP's use of the MVLPP funds for purposes outside the specified scope of the RR-MVLPP ran contrary to the policy declared in Presidential Decree No. 1445 (*Government Auditing Code of the Philippines*) x x x. [T]he MVLPP car funds were trust funds, in that they came officially into the possession of DBP as an agency of the Government, or of the public officer as trustee, agent, or administrator, or were received for the fulfillment of some obligation. Pursuant to Section 4 of Presidential Decree No. 1445, "trust funds shall be available and may be spent only for the specific purpose for which the trust was created or the funds received." Their nature as trust funds constituted a limitation on their use or application.

6. REMEDIAL LAW; ACTIONS; ESTOPPEL; THE GOVERNMENT IS NEVER ESTOPPED BY THE MISTAKE OR ERROR OF ITS AGENTS BUT EXCEPTIONS TO THE GENERAL RULE OF NON-ESTOPPEL MAY BE ALLOWED ONLY IN RARE AND UNUSUAL CIRCUMSTANCES IN WHICH THE INTERESTS OF JUSTICE CLEARLY REQUIRE THE APPLICATION OF ESTOPPEL.— The fact that the assailed Notice of Disallowance was issued only after 15 years from the implementation of Circular No. 25, and only after 10 years from the implementation of Resolution No. 0246 did not preclude the COA from acting as it did. The general rule is that the Government is never estopped by the mistake or error of its agents. If that were not so, the Government would be tied down by the mistakes and blunders of its agents, and the public would unavoidably suffer. Neither the erroneous application nor the erroneous enforcement of the statute by public officers can

preclude the subsequent corrective application of the statute. Exceptions to the general rule of non-estoppel may be allowed only in rare and unusual circumstances in which the interests of justice clearly require the application of estoppel. For one, estoppel may not be invoked if its application will operate to defeat the effective implementation of a policy adopted to protect the public. Here, however, no exceptional circumstance existed that warranted the application of estoppel against the COA. Accordingly, the Court cannot declare the disallowance invalid on that basis.

7. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; SALARIES AND BENEFITS; THE INDIVIDUAL BENEFICIARIES AND THE APPROVING OFFICERS OF SALARIES AND BENEFITS SUBSEQUENTLY DISALLOWED NEED NOT REFUND THE DISALLOWED AMOUNTS THAT THEY RECEIVED IN GOOD FAITH.— It is settled that the recipients or payees of salaries, emoluments, benefits, and allowances subsequently disallowed need not refund the disallowed amounts that they had received in good faith. It is equally settled that the officers taking part in the approval of the disallowed salaries and benefits are required to refund only the amounts thereof received when they are found to be in bad faith and the disbursement was made in good faith. Basic is the principle that good faith is presumed. The party alleging bad faith has the burden of proving the allegation. In this regard, the Notice of Disallowance nowhere discussed the respective liabilities of the persons thereby identified by the COA except for the payees of the MVLPP car funds; neither did the COA make a factual finding on the participation of those it had identified aside from the payees, or state the grounds and the legal basis why said individuals were liable. The COA did not also substantiate the imputation of bad faith against the approving officers and the officers-availees. x x x Without any evidence being presented by the COA to show that the individual beneficiaries and the approving officers had acted in bad faith and with gross negligence in the performance of their duties in relation to the MVLPP, the persons identified by the COA to be liable for the disallowances should not be ordered to refund the amounts or restitute the benefits disallowed by the COA.

APPEARANCES OF COUNSEL

DBP Legal Services Group for petitioner in G.R. No. 216538.
Antonio & Revilla Law Firm for petitioners in G.R. No. 216954.
The Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *J.*:

Before us are the consolidated petitions assailing Decision No. 2012-269 dated December 28, 2012[1] and Resolution dated December 4, 2014[2] issued by respondent Commission on Audit (COA) disallowing the 50% subsidy granted by petitioner Development Bank of the Philippines (DBP) to its officers who had availed themselves of the benefits granted under the Motor Vehicle Lease Purchase Plan (MVLPP).[3]

Antecedents

On February 9, 1990, the Monetary Board, through Board Resolution No. 132, approved the Rules and Regulations for the Implementation of the Motor Vehicle Lease-Purchase Plan (RR-MVLPP) for Government Financial Institution (GFI) officers as part of the package of fringe benefits "to enable them to meet the demands of their work with more facility and efficiency and provide them with economic means of coping with the prestige and stature attendant to their respective positions."[4]

The RR-MVLPP involved the acquisition of motor vehicles to be leased or sold to qualified officers of GFIs. Under the plan, the GFI concerned was to constitute a fund sourced from

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[1] *Rollo* (G.R. No. 216538), pp. 66-82.

[2] *Id*. at 83.

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

[4] *Id.* at 6, 85.

the appropriation in such amount necessary to finance the acquisition of brand-new motor vehicles to be leased or sold to the GFI's eligible officers. The officers availing themselves of the benefits under the plan were required to execute a Lease Purchase Agreement with maximum periods of 10 years, and the aggregate monthly rentals for one year of not exceeding 10% of the acquisition cost of each motor vehicle would be payable through salary deduction. The plan specified that at the end of the lease periods, the GFI would transfer the ownership over the vehicles to the officers concerned, but should the officers opt to purchase the vehicles prior to the termination of the lease periods, the purchase prices would be equal to the acquisition costs minus the rentals already paid. The same arrangement would apply should the officers retire or be separated from the service prior to the end of the 10-year lease periods.[5] In addition, each GFI was authorized to adopt uniform supplementary rules that would detail the implementation of the RR-MVLPP covering, but not necessarily limited to, the procedure for availment, definition of net take-home pay of the officers-awardees and similar areas that needed further clarification.[6]

On July 20, 1992, the Office of the President approved with certain modifications the RR-MVLPP, which applied to GFI officers occupying positions with salary grades (SG) of not lower than SG-25.[7]

Among the GFIs covered by the RR-MVLPP was DBP. On July 30, 1992, DBP issued Circular No. 25 to establish the conditions for the plan consistent with the RR-MVLPP,[8] including the maximum loan period of 10 years and annual rental equivalent to 10% of the acquisition cost of the vehicle payable through salary deduction. Five years later, DBP's Board of Directors adopted Board Resolution No. 0246 dated June 13, 1997 constituting the MVLPP Fund.

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[5] *Id*. at 27-28.

[6] *Id*. at 89.

[7] *Id*. at 85-89.

[8] *Rollo* (G.R. No. 216954), pp. 86-95.

Board Resolution No. 0246 stated:

I. 1. The MVLPP Fund shall consist of:

   a. the money provided by the Bank interest-free to fund the acquisition of vehicles for the officer-availees;

   b. the pooled funds coming from contributions of officer-availees;

2. The DBP Provident Fund (PF) shall manage the MVLPP Fund.

3. The return of the amount advanced by the Bank at the end of the ten (10) year lease period, without interest. PF shall be charged with 24% interest rate per annum in case of failure to remit the funds to the Bank after the 10th year.

4. The utilization of the MVLPP Fund for the officer's availments and re-availments of the MVLPP.

5. Retirement according to law and involuntary secession from the Bank of any member of the DBP Board of Directors shall be covered under this Plan.

6. Authority for PF to distribute income of the MVLPP Fund and to grant multi-purpose loans to officer-availees, if necessary. This authority shall also apply to the initial MVLPP availments.

II. Authority for the Provident Fund to declare a "special dividend" out of the income of the MVLPP Fund, for a maximum amount equivalent to 50% of their availments, which dividend shall be applied in full liquidation of existing availments of officer-availees who have already retired or the members of the DBP Board of Directors who have seceded from the Bank prior to the expiration of the lease and with outstanding MVLPP availments, provided, that such retirees/directors have paid at least sixty (60) monthly rentals. The term "retiree" referred to hereof shall have the same meaning attached to it in the mechanics.

PROVIDED, That all other terms and conditions of the Motor Vehicle Lease Purchase Plan not herein affected shall remain in full force and effect.[9]

DBP implemented its MVLPP in accordance with Board Resolution No. 0246. On April 12, 2007, however, the supervising auditor of the COA assigned to DBP issued Audit Observation Memorandum No. HO-HRM (PF)-MVLPP-AOM-20006-005[10] to the effect that what had been duly approved by the Office of the President through the RR-MVLPP was for DBP to advance the money to pay for the acquisition of the vehicles and for the officers-availees to pay in full the cost of the vehicle. The supervising auditor opined that because Board Resolution No. 0246 ran contrary to the RR-MVLPP, DBP should cease its practice of requiring officers-availees to pay only 50% of the cost of the vehicle; and that DBP should oblige all its officers-availees to pay the remaining 50% cost of their vehicles.[11]

DBP, by way of comment,[12] contested the supervising auditor's interpretation of the RR-MVLPP, and asserted that under Section 7 of the RR-MVLPP, each GFI was authorized to adopt uniform supplementary rules that would detail the implementation of the car loan plan. It contended that the car fund was not meant to be an income-generating fund whose earnings would flow back to it; that contrary to the findings of the supervising auditor, the total cost of each vehicle was paid on the fifth year from availment; that 50% of the total cost of each vehicle was paid through the lease rentals (salary deduction) by the officers-availees, and the remaining 50% was paid through an interest-free loan extended to the officers-availees from the earnings of the car fund; that on the tenth year from availment, the earnings of the car fund were distributed and applied in full liquidation of the officers-availees' loan; and that expenditures related to DBP's MVLPP had been passed in audit since its implementation

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[9] *Rollo* (G.R. No. 216538), pp. 90-91.

[10] *Id*. at 99-103.

[11] *Id*. at 102-103.

[12] *Id*. at 104-110.

in 1983. Thus, the present corporate auditor could not properly raise the issues given that previous COA audits had already ruled in favor of the legality or compliance with the legal requirements of the expenses.[13]

On May 20, 2007, the supervising auditor issued a Notice of Disallowance[14] relative to the subsidy granted by DBP to its officers who had availed themselves of the MVLPP benefits amounting to 50% of the acquisition costs of the motor vehicles, or totalling ₱64,436,931.61. The Notice of Disallowance declared the Members of the Board of Directors, Certify payroll/HRM, Accountant, and Cashier of DBP liable "based on their respective participation in the subject transaction."[15]

DBP filed its appeal with the Corporate Government Sector (CGS)-Cluster A of the COA. On July 22, 2010, during the pendency of the appeal, it also filed its manifestation and motion alleging that President Arroyo, upon the request of DBP, had confirmed the power and authority of its Board of Directors to approve and implement the Compensation Plan from 1999 onwards, including the implementation of the MVLPP.[16]

However, on February 10, 2011, the Director of the CGS-Cluster A of COA denied the appeal through CGS-A Decision No. 2011-001 and affirmed the Notice of Disallowance,[17] disposing:

WHEREFORE, premises considered, this Commission finds the instant appeal devoid of merit. Accordingly, said Notice of Disallowance No. MVLPP-2006-10 (06) is hereby **AFFIRMED.**[18]

DBP further appealed to seek the reversal and setting aside of CGS-A Decision No. 2011-001.

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[13] *Id*. at 107-110.

[14] *Id*. at 111-117.

[15] *Id*. at 117.

[16] *Id*. at 69.

[17] *Id*. at 144-151.

[18] *Id*. at 151.

On December 28, 2012, the COA Commission Proper rendered the assailed Decision No. 2012-269 denying DBP's petition for review, *viz.*:

> **WHEREFORE,** this Commission **DENIES** the Petition for Review and **AFFIRMS** COA CGS-A Decision No. 2011-001 dated February 10, 2011 and ND No. MVLPP-2006-10 dated May 20, 2007. The list of MVLPP availees is attached herein.[19]

On February 8, 2013, DBP filed its motion for reconsideration of the COA's Decision No. 2012-269.[20]

A few months later, or in June 2013, Alfredo C. Antonio, Ruben O. Fruto and Cesar M. Drilon, Jr., who are the petitioners in G.R. No. 216954, were informed about Decision No. 2012-269 by a concerned employee of DBP. Being former Members of the Board of Directors of DBP thereby affected, they immediately submitted a letter-request for reconsideration on June 6, 2013 taking issue against the decision for lack of notice to them, and claiming good faith on the subject matter thereof, among others.[21]

On December 4, 2014, the COA Commission Proper *En Banc* issued the assailed Resolution denying DBP's motion for reconsideration and the supplemental motions for reconsideration of the petitioners in G.R. No. 216954 for lack of merit.[22]

Hence, the petitioners have all come to the Court via separate petitions under Rule 64, in relation to Rule 65, of the *Rules of Court*.

On May 19, 2015, the Office of the Solicitor General, as counsel of the COA, moved to consolidate the petitions in G.R. No. 216538 and G.R. No. 216954.[23] Accordingly, on July 7,

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[19] *Id*. at 73-74.

[20] *Id*. at 196-212.

[21] *Rollo* (G.R. No. 216954), pp. 10-11.

[22] *Rollo* (G.R. No. 216538), p. 83.

[23] *Id*. at 359-362.

2015, this Court ordered the consolidation of G.R. No. 216538 and G.R. No. 216954.[24]

Issues

DBP raises the following issues in G.R. No. 216538, namely:

A.

THE COMMISSION ON AUDIT CITED NO LEGAL OR FACTUAL BASIS IN HOLDING THAT THE DBP-MVLPP VIOLATED ANY OF THE PROVISIONS OF THE RR-MVLPP. ON THE CONTRARY, DBP HAS SHOWN THAT ITS MVLPP IS CONSISTENT AND COMPLIES WITH THE RR-MVLPP.

B.

THE COA, THROUGH COUNTLESS PAST SUPERVISING AUDITORS AND CLUSTER DIRECTORS, HAD ALREADY PASSED IN AUDIT THE BENEFITS GRANTED AND EXPENSES INCURRED BY THE BANK UNDER THE DBP MVLPP FROM 1992 UP TO 2007, OR FIFTEEN LONG YEARS. IT WOULD BE UNJUST, UNFAIR AND INEQUITABLE FOR COA TO BELATEDLY RECALL THESE FINDINGS WITH REGARD TO THE VALIDITY OF THE 1992-1996 DBP-MVLPP DISBURSEMENTS WITH THE ISSUANCE OF A NOTICE OF DISALLOWANCE ONLY IN 2007.

C.

COA VIOLATED THE LAW WHEN IT DISREGARDED THE AUTHORITY GRANTED BY THE DBP CHARTER TO THE DBP BOARD OF DIRECTORS TO FORMULATE POLICIES NECESSARY TO CARRY OUT EFFECTIVELY THE OPERATIONS OF THE BANK AND TO FIX THE COMPENSATION OF ITS OFFICERS AND EMPLOYEES. THE ADOPTION AND CONTINUED IMPLEMENTATION OF THE DBP MVLPP IS PART OF THE COMPENSATION SET BY THE DBP BOARD FOR THE BENEFIT OF ITS EMPLOYEES.

D.

COA IGNORED THE BASIC AND ELEMENTARY PRINCIPLE THAT A LAW PREVAILS OVER A MERE EXECUTIVE

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[24] *Id*. at 442.

ISSUANCE. ITS INVOCATION OF MEMORANDUM ORDER NO. 20 TO DEFEAT THE PROVISIONS OF E.O. NO. 81, AS AMENDED BY R.A. NO. 8523, THE BASIS OF THE DBP MVLPP, IS PATENTLY ERRONEOUS. BESIDES, M.O. NO. 20 CLEARLY DOES NOT APPLY TO DBP IN VIEW OF ITS RECOGNIZED EXEMPTION FROM THE SALARY STANDARDIZATION LAW.

E.

WHILE INVOKING M.O. NO. 20 AGAINST THE DBP MVLPP ON THE PURPORTED LACK OF PRESIDENTIAL APPROVAL, COA REFUSED TO ACKNOWLEDGE THE CONFIRMATION BY FORMER PRESIDENT GLORIA MACAPAGAL ARROYO, WHO ISSUED THE SAME M.O. NO. 20, OF THE AUTHORITY OF THE DBP BOARD TO ADOPT AND CONTINUE TO IMPLEMENT THE DBP MVLPP.

F.

IN ITS EAGER, IF NOT OVERZEALOUS, DESIRE TO SUSTAIN THE DISALLOWANCE ALREADY ISSUED, THE COA ADDED A NEW GROUND FOR DISALLOWING THE DBP MVLPP-THE ALLEGED LACK OF PRIOR BSP APPROVAL. SAID REQUIREMENT IS UNNECESSARY AND IRRELEVANT.

G.

ASSUMING THAT THE AVAILMENT OF THE MULTI-PURPOSE LOAN AND DISTRIBUTION OF INCOME UNDER THE DBP MVLPP FOR THE PAYMENT OF THE PURCHASE PRICE BALANCE WERE PROPERLY DISALLOWED, THE COA SHOULD HAVE APPLIED TO THE INSTANT CASE THE PREVAILING JURISPRUDENCE THAT DISALLOWED BENEFITS RECEIVED IN GOOD FAITH NEED NOT BE REFUNDED. THE MVLPP AVAILEES WHO RECEIVED THE BENEFIT, THE OFFICERS WHO APPROVED THE MVLPP AND THOSE WHO MERELY PARTICIPATED IN THE APPROVAL AND RELEASE OF THE BENEFITS, ALL OF WHOM ACTED IN GOOD FAITH, NEED NOT REFUND THE SAME.[25]

[25] *Id*. at 13-17.

The petitioners in G.R. No. 216954 posit that the COA committed grave abuse of discretion amounting to excess or lack of jurisdiction as follows:

I.

In rendering the Decision dated 28 December 2012 and Resolution dated 4 December 2014, which affirmed the personal liability of the petitioners, without affording them their constitutional right to due process by depriving them of notice, hearing and opportunity to present evidence, hence, null and void *ab initio.*

II.

In affirming the personal liability of the petitioners for the disallowance without citing the legal and factual basis therefor; hence, the Decision dated 28 December 2012 was null and void for being in violation of Section 14, Article VIII of the Constitution.

III.

In affirming the disallowance because it thereby violated the petitioners' constitutional right to the speedy disposition of cases due to the inordinate delay in issuing the Notice of Disallowance.

IV.

In affirming the liability of the petitioners under the Notice of Disallowance dated 20 May 2007 despite the annual audits conducted by the Office of the Supervising Auditor on the availments of the loan under the MVLPP from 1992 to 2007 without any disallowance and the absence of factual findings of bad faith and gross negligence on the part of DBP's Board of Directors and payees.

V.

In holding that the multi-purpose loan and special dividend in DBP's Resolution No. 0246 were not sanctioned by the Monetary Board Resolution No. 132 (RR-MVLPP).[26]

The issues are restated as follows:

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[26] *Rollo* (G.R. No. 216954), pp. 11-12.

a. Whether or not the constitutional rights to due process and speedy disposition of cases of the petitioners in G.R. No. 216964 were violated;

b. Whether or not DBP had the authority to grant multi-purpose loans and special dividends from the MVLPP car funds;

c. Whether or not the COA was estopped from disallowing DBP's disbursements from its MVLPP; and

d. Whether or not the persons identified by the COA as liable should be ordered to refund the total amounts disallowed by the COA.

Ruling of the Court

The consolidated petitions are partly meritorious.

I.
The petitioners in G.R. No. 216954 were not deprived of their rights to due process and speedy disposition of cases

The petitioners in G.R. No. 216954 assert that they were denied due process because the COA did not serve them copies of any of its relevant issuances despite their legal rights being thereby adversely affected; that they had not been given notice of the adverse findings against them; that they had not been afforded the opportunity to comment on the matters subject of the adverse findings; that they had not been able to submit evidence on their behalf;[27] and that the inordinate delay in issuing the Notice of Disallowance had violated their constitutional right to the speedy disposition of cases, thereby rendering the disallowance null and void *ab initio*.[28]

We disagree with the assertions of the petitioners in G.R. No. 216954.

Under Section 7, Rule IV of the 2009 Revised Rules of Procedure of the COA, DBP has the duty to serve the copies of the Notice of Disallowance, orders and/or decisions of the COA on the individuals to be held liable especially when there were several payees, to wit:

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[27] *Id*. at 13.

[28] *Id*. at 21.

Section 7. Service of Copies of ND/NC/NS, Order or Decision – The ND, NC, NS, order, or decision shall be served to each of the persons liable/responsible by the Auditor, through personal service, or if not practicable through registered mail. In case there are several payees, as in the case of a disallowed payroll, service to the accountant who shall be responsible for informing all payees concerned, shall constitute constructive service to all payees listed in the payroll.

The COA received the petitioners' joint motion for reconsideration vis-à-vis the assailed Decision No. 2012-269 dated December 28, 2012 following the submission of the petitioners' individual letters seeking the reconsideration of the questioned issuances. Their joint motion and their letters for reconsideration were considered by the COA in reaching the Resolution dated December 4, 2014.[29] As such, the petitioners had no factual and legal bases to complain. We remind that the essence of due process is simply the opportunity to be heard or, as applied to administrative proceedings, the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. In the application of the guarantee of due process, indeed, what is sought to be safeguarded is not the lack of previous notice but the denial of the opportunity to be heard. As long as the party was afforded the opportunity to defend his interests in due course, he was not denied due process.[30]

The petitioners' contention about the violation of their constitutional right to the speedy disposition of cases was similarly unwarranted. The right requires that proceedings should be conducted according to fixed rules, free from vexatious, capricious, and oppressive delays. The right is violated when unjustified postponements of the proceedings are sought and obtained, or when a long period of time is allowed without justifiable cause or motive to elapse without the parties having

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[29] *Rollo* (G.R. No. 216538), p. 83.

[30] *Mendoza v. Commission on Audit,* G.R. No. 195395, September 10, 2013, 705 SCRA 306, 314-315.

their case tried.[31] Yet, none of such circumstances was attendant herein.

The petitioners cite the COA's issuance of the Notice of Disallowance only after 10 years from the implementation of DBP's Board Resolution No. 0246 to support their insistence on the violation of their right to the speedy disposition of the case. In our view, however, the timing of the disallowance was material only to their contention on the COA being estopped from issuing the disallowance instead of to their invocation of the right to speedy disposition of their cases. The latter unquestionably pertained only to the conduct of proceedings actually commenced in the COA.

II.

The DBP had no authority to grant multi-purpose loans and special dividends from the MVLPP car funds

The petitioners argue that the DBP's MVLPP faithfully complied with the provisions of the RR-MVLPP; that the provisions of DBP's MVLPP granting the multi-purpose loan to officers-availees as payment of the vehicles acquired did not contravene those of the RR-MVLPPs; that DBP's Board of Directors had been granted the power to create and establish the Provident Fund for the purpose of the payment of benefits; that the grant of the multi-purpose loan and distribution of income to pay the acquisition costs of the vehicles under the DBP-MVLPP were a form of benefit authorized under DBP's Charter; that under DBP's MVLPP, the money put into the MVLPP by the Government through DBP at the start of the lease period was already returned in full; that the COA disregarded the authority granted by DBP's Charter to its Board of Directors to formulate policies necessary to carry out effectively the operations of DBP and to fix the compensation of its officers and employees, including the adoption and continued implementation of DBP's MVLPP as part of its employees' compensation; that the COA's invocation of Memorandum Order

[31] *People v. Mendoza,* G.R. No. 180501, December 24, 2008, 575 SCRA 616, 624.

No. 20 to defeat the provisions of Executive Order No. 81, as amended by Republic Act No. 8523, the basis of the MVLPP, was patently erroneous; that the COA refused to acknowledge the confirmation by former President Arroyo of the authority of DBP's Board of Directors to adopt and continue to implement the MVLPP;[32] and that the COA gravely abused its discretion amounting to excess or lack of jurisdiction in holding that the multi-purpose loans and special dividends granted pursuant to Resolution No. 0246 were not sanctioned by the RR-MVLPP.[33]

The COA counters that DBP violated the RR-MVLPP in granting interest-free multi-purpose loans and in distributing dividends out of the car funds that had been specifically intended for the acquisition of motor vehicles to be leased or sold to qualified officers; that the unlawful diversion of the car funds resulted in damage and losses to the Government; that the grant of multi-purpose loans and the distribution of the income of the car funds were in violation of the salary standardization law; and that the confirmation by President Arroyo of the authority of DBP to continue the implementation of the plan pursuant to Resolution No. 0246 was without force and effect.[34]

The petitioners' arguments are bereft of merit.

The Constitution vests enough latitude in the COA, as the guardian of public funds, to determine, prevent and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government fund. The COA is thus accorded the complete discretion to exercise its constitutional duty. To accord with such constitutional empowerment, the Court generally sustains the COA's decisions in recognition of its expertise in the implementation of the laws it has been entrusted to enforce. Only if the COA acts without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may the Court intervene and correct

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[32] *Rollo* (G.R. No. 216538), pp. 13-28; (G.R. No. 16954), pp. 33-36.

[33] *Rollo* (G.R. No. 216954), p. 12.

[34] *Rollo* (G.R. No. 216538), pp. 388-389.

the COA's actions. For this purpose, grave abuse of discretion means that there is on the part of the COA an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, such as when the assailed decision or resolution rendered is not based on law and the evidence but on caprice, whim and despotism.[35]

We have no factual or legal reason to disturb or to undo the COA's finding that Resolution No. 0246 was inconsistent with the RR-MVLPP, resulting in the disallowance of the amount of ₱64,436,931.61 representing 50% of the costs of the car subsidy granted by DBP under its MVLPP. The MVLPP allowed DBP to grant multi-purpose loans to its officers-availees out of the funds and earnings of the MVLPP funds on the fifth year from the availment of the MVLPP. The interest-free loans were to be paid in full from the earnings of the MVLPP funds on the tenth year from availment of the MVLPP. The earnings came from DBP's investment of the funds in money market placements and trust instruments. Indeed, DBP did not have the legal authority to use the funds for such investment purposes. Section 1 of the RR-MVLPP stipulated that "the GFI shall constitute a Fund, to be designated as the Car Fund, which shall be funded with an appropriation in such amount as may be necessary to finance the acquisition of brand new motor vehicles which it shall lease/sell to eligible GFI officers." The car fund was limited to the acquisition of the brand new motor vehicles to be leased or sold to eligible officers. That purpose could not be expanded to DBP's granting of multi-purpose loans to its officers-availees and to investing the car funds in money market placements and trust instruments even if doing so was aimed at aiding its officers-availees in their acquisition of motor vehicles. The interpretation being advocated by the petitioners, even if it aligned with the organic purpose of the establishment of the MVLPP, could not be countenanced. It is an elementary rule in statutory construction that when the words and phrases of the statute are clear and unequivocal, their meaning must be

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[35] *Technical Education and Skills Development Authority (TESDA) v. Commission on Audit,* G.R. No. 204869, March 11, 2014, 718 SCRA 402, 417.

determined from the language employed and the statute must be taken to mean exactly what it says. The courts may not speculate as to the probable intent of the framers of the law especially when the law is clear.[36]

The COA also congently observed in the assailed decision, to wit:

> The Director, CGS-Cluster A, this Commission, correctly singled out the fact that nothing in the RR-MVLPP authorizes the transmutation of the authorized car loan from the Car Fund into a multi-purpose loan, as implemented under DBP Board Resolution No. 0246. On face value, a multi-purpose loan can fund any endeavor or luxury desired by the availee other than a car. The singular purpose of the RR-MVLPP and the Fund that it authorizes to create is the provision of a loan for a car. The expansion of the purpose of the loan is absolutely unwarranted under the RR-MVLPP.[37]

DBP's use of the MVLPP funds for purposes outside the specified scope of the RR-MVLPP ran contrary to the policy declared in Presidential Decree No. 1445 (*Government Auditing Code of the Philippines*), as follows:

> Section 2. *Declaration of Policy.* It is the declared policy of the State that all resources of the government shall be **managed, expended or utilized in accordance with law and regulations, and safeguarded against loss or wastage through illegal or improper disposition,** with a view to ensuring efficiency, economy and effectiveness in the operations of government. The responsibility to take care that such policy is faithfully adhered to rests directly with the chief or head of the government agency concerned. (Bold emphasis ours)

It is also notable that the MVLPP car funds were trust funds, in that they came officially into the possession of DBP as an agency of the Government, or of the public officer as trustee, agent, or administrator, or were received for the fulfillment of some obligation.[38] Pursuant to Section 4 of Presidential Decree No. 1445,

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[36] *Pascual v. Pascual-Bautista,* G.R. No. 84240, March 25, 1992, 207 SCRA 561, 568.

[37] *Rollo* (G.R. No. 216538), p. 71.

[38] Section 3(4), Presidential Decree No. 1445.

"trust funds shall be available and may be spent only for the specific purpose for which the trust was created or the funds received." Their nature as trust funds constituted a limitation on their use or application.

Still, DBP justifies the granting of multi-purpose loans and special dividends out of the MVLPP funds by arguing that such granting was a form of benefit authorized under DBP's Charter. It submits that DBP's Board of Directors was granted the power to create and establish a Provident Fund for the purpose of the payment of benefits; and that the funds managed under the Provident Fund were for paying benefits to its officers or employees under terms and conditions that its Board of Directors might fix.[39]

The justification is unacceptable.

The Provident Fund and the MVLPP car funds were obviously distinct and separate funds governed by different laws. Even if the Provident Fund was tasked to manage the MVLPP funds, the treatment of the funds would not be the same. DBP's insistence on its authority to determine the compensation packages for its employees, and to grant benefits under its Charter was clearly misplaced.

Under the circumstances, the COA did not act without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction in disallowing the amount of ₱64,436,931.61 representing 50% of the acquisition costs of the vehicles granted under the MVLPP.

III.
The COA is not estopped from disallowing the DBP's expenses relative to its MVLPP

The petitioners in G.R. No. 216954 argue that the COA was already estopped from disallowing the transactions involving the MVLPP in view of the prior audits by the COA's auditors not finding any irregularity in the transactions under the MVLPP.

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[39] *Rollo* (G.R. No. 216538), p. 25.

This argument finds support in the presumption that official duty had been regularly performed by the past auditors.[40]

The fact that the assailed Notice of Disallowance was issued only after 15 years from the implementation of Circular No. 25, and only after 10 years from the implementation of Resolution No. 0246 did not preclude the COA from acting as it did. The general rule is that the Government is never estopped by the mistake or error of its agents. If that were not so, the Government would be tied down by the mistakes and blunders of its agents, and the public would unavoidably suffer. Neither the erroneous application nor the erroneous enforcement of the statute by public officers can preclude the subsequent corrective application of the statute.[41] Exceptions to the general rule of non-estoppel may be allowed only in rare and unusual circumstances in which the interests of justice clearly require the application of estoppel. For one, estoppel may not be invoked if its application will operate to defeat the effective implementation of a policy adopted to protect the public.[42]

Here, however, no exceptional circumstance existed that warranted the application of estoppel against the COA. Accordingly, the Court cannot declare the disallowance invalid on that basis.

IV.
The persons liable, as identified by the COA, should not be ordered to refund the total amount disallowed by the COA

The petitioners urge that the MVLPP's officers-availees, the officers who had approved the MVLPP, and those who had participated in the approval and release of the benefits need not refund the disallowed amounts because they had thereby

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[40] *Id*. at 28-30.

[41] *National Amnesty Commission v. Commission on Audit,* G.R. No. 156982, September 8, 2004, 437 SCRA 655, 668.

[42] *Newsounds Broadcasting Network, Inc. v. Dy,* G.R. Nos. 170270 & 179411, April 2, 2009, 583 SCRA 333, 366.

acted in good faith.[43] Moreover, the petitioners in G.R. No. 216954, as former Members of DBP's Board of Directors, indicate that the assailed decision of the COA did not state the factual and legal basis of their alleged liability as members of the Board of Directors.[44]

The COA counters that the circumstances surrounding the availment of the car loans revealed a scheme that clearly contravened the RR-MVLPP; that such scheme was enough to debunk the claim of lack of bad faith on the part of the officers-availees; that, accordingly, there could be no condonation of the obligation to refund pursuant to the Notice of Disallowance; that the assailed decision and resolution specified the necessary factual and legal basis for holding the individual petitioners personally liable; and that the pronouncement of the petitioners' liability under the Notice of Disallowance should be read together with the body of the Notice of Disallowance as well as the attached schedule of the payees who were liable.[45]

Here, the Notice of Disallowance issued by the COA stated the following in reference to the persons liable for the total amount disallowed:

> As contained in the list of persons liable and based on their respective participation in the subject transaction, persons liable thereon are as follows:
>
> Board of Directors
> Certify payroll/HRM
> Accountant
> Cashier
> All payees per attached payrolls and schedules.[46]

We agree with the petitioners.

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[43] *Rollo* (G.R. No. 216538), pp. 49-59.

[44] *Rollo* (G.R. No. 216954), pp. 16-21.

[45] *Rollo* (G.R. No. 216538), p. 417.

[46] *Id*. at 117.

It is settled that the recipients or payees of salaries, emoluments, benefits, and allowances subsequently disallowed need not refund the disallowed amounts that they had received in good faith. It is equally settled that the officers taking part in the approval of the disallowed salaries and benefits are required to refund only the amounts thereof received when they are found to be in bad faith and the disbursement was made in good faith.[47]

Basic is the principle that good faith is presumed. The party alleging bad faith has the burden of proving the allegation.[48] In this regard, the Notice of Disallowance nowhere discussed the respective liabilities of the persons thereby identified by the COA except for the payees of the MVLPP car funds; neither did the COA make a factual finding on the participation of those it had identified aside from the payees, or state the grounds and the legal basis why said individuals were liable. The COA did not also substantiate the imputation of bad faith against the approving officers and the officers-availees. In contrast, the petitioners presented considerable arguments on the interpretation of the RR-MVLPP in their favor and for their benefit. We cannot find any specific provision in the RR-MVLPP that prohibited the manner in which DBP had implemented the plan, for even the COA's assailed decision recognized and declared that the manner of implementation by DBP had been "in line with the organic purpose of the RR-MVLPP."[49] As such, the COA did not show that bad faith had attended DBP's implementation of the MVLPP.

That DBP had been implementing the MVLPP for 15 years with annual audits being conducted by the COA auditors who would have surely known of any irregularities in the course of their examination, evaluation, review and audit of the benefits availed of under the MVLPP is another circumstance to be

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[47] *Maritime Industry Authority v. Commission on Audit,* G.R. No. 185812, January 13, 2015, 745 SCRA 300, 346-347.

[48] *Cotiangco v. Province of Biliran,* G.R. No. 157139, October 18, 2011, 659 SCRA 177, 184.

[49] *Rollo* (G.R. No. 216954), p. 54.

considered in favor of the petitioners. Such circumstance bolstered the claim of good faith on the part of the approving officers and of the officers-availees. It is clear that they all apparently relied on the positive findings of the past COA auditors on the implementation of the MVLPP in the previous years.

Also worth considering herein is that the full acquisition costs of the motor vehicles availed of had been eventually returned to DBP in full on the tenth year from their availment under the MVLPP. This explained why the COA did not even quantify the losses *supposedly sustained* by the Government from the erroneous implementation of the MVLPP.

Lastly, the officers-availees did not abuse the MVLPP benefits. Based on the records, they availed themselves of the benefits under the plan only once. In fact, 50% of the acquisition costs of the vehicles had been granted only to MVLPP officers-availees who had meanwhile *retired* or to the members of the Board of Directors who had been meanwhile *separated* from DBP prior to the expiration of the leases.

Without any evidence being presented by the COA to show that the individual beneficiaries and the approving officers had acted in bad faith and with gross negligence in the performance of their duties in relation to the MVLPP, the persons identified by the COA to be liable for the disallowances should not be ordered to refund the amounts or restitute the benefits disallowed by the COA.

Nonetheless, the Court needs to clarify that the claim of good faith is being favorably considered herein only because the Notice of Disallowance issued long after the disallowed availments were made, and because no evidence showed those who had availed themselves of the benefits had not fully returned the funds in question. Verily, there would be no way of appreciating good faith in their favor had the availments been made after the disallowance issued.

WHEREFORE, the Court **AFFIRMS** Decision No. 2012-269 dated December 28, 2012 and the Resolution dated December 4, 2014 issued by the Commission on Audit subject

to the **MODIFICATION** that the persons identified by the Commission on Audit as liable (namely: the members of the Board of Directors in the period material hereto, particularly the petitioners in G.R. No. 216954; the Payroll Office and the Human Resources Management; the Accountant; the Cashier; and all the payees per the payrolls and schedules subjected to the audit) are not required to refund the disallowed amounts.

No pronouncement on costs of suit.

SO ORDERED.

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

EN BANC

[G.R. No. 217189. April 18, 2017]

NINI A. LANTO, IN HER CAPACITY AS THEN DIRECTOR II OF THE ADMINISTRATIVE BRANCH, NOW DIRECTOR IV OF THE PRE-EMPLOYMENT SERVICES OFFICE OF THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA), *petitioner, vs.* **COMMISSION ON AUDIT, NOW REPRESENTED BY CHAIRPERSON REYNALDO A. VILLAR, COMMISSIONER JUANITO G. ESPINO, JR., AND ASSISTANT COMMISSIONER DIVINIA M. ALAGON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; PRINCIPLE OF IMMUTABILITY OF FINAL JUDGMENTS OR ORDERS; A DECISION OR FINAL

ORDER THAT HAS ACQUIRED FINALITY MAY NO LONGER BE MODIFIED IN ANY RESPECT; PURPOSE.— [A] decision or final order that has acquired finality may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it is made by the court that rendered it or by the Highest Court of the land. Any act that violates this principle of immutability must be immediately struck down. The doctrine of immutability of a final judgment or order serves a *two-fold* purpose, namely: (1) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (2) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why the courts exist. Controversies cannot drag on indefinitely because the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.

2. ID.; ID.; ID.; ID.; EXCEPTIONS.— The doctrine is not a mere technicality to be easily brushed aside, but a matter of public policy as well as a time-honored principle of procedural law. The only exceptions to the rule on the immutability of final judgments are: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries that cause no prejudice to any party; and (3) void judgments.

3. ID.; PROCEDURAL RULES; STRICT ADHERENCE WITH RIGID PROCEDURAL RULES MAY BE SUSPENDED FOR SEVERAL JUSTIFICATIONS; CASE AT BAR.— [T]he Court has recognized several justifications to suspend the strict adherence with rigid procedural rules like the doctrine of immutability, such as: (*a*) matters of life, liberty, honor or property; (*b*) the existence of special or compelling circumstances; (*c*) the merits of the case; (*d*) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (*e*) lack of any showing that the review sought is merely frivolous and dilatory; and (*f*) the other party will not be unjustly prejudiced thereby. Upon careful appreciation of the records, the Court considers justifications (*a*), (*b*) and (*c*) to have relevance to the petitioner's situation. First of all, the adverse result would surely make her personally liable for a substantial sum of monetary liability from which she had not directly benefited, thereby prejudicing her right to property. Secondly, the petitioner's good faith in certifying to

the correctness of the payrolls based on *available* records about Labrador having actually reported to work, and on her absolute lack of knowledge of his having been dismissed and of the pendency of the criminal case in the Sandiganbayan constituted compelling circumstances that justified applying the exception in her favor. x x x Only convincing proof of the petitioner's malice or bad faith in the performance of her duties could have warranted the rejection of her plea of good faith. x x x But the COA did not adduce proof of her malice or bad faith. x x x And, thirdly, the fact that the petitioner was on foreign assignment when the COA rendered the assailed issuances plausibly explained why she did not seasonably assail or oppose the disallowances.

APPEARANCES OF COUNSEL

Office of the Legal Counsel POEA for petitioner.
The Solicitor General for public respondents.

D E C I S I O N

BERSAMIN, *J.*:

At issue is the personal liability of the petitioner for the disallowed payment of the salaries and benefits of a dismissed public employee corresponding to the period after the latter's dismissal.

By petition for *certiorari*, the petitioner seeks to annul and set aside the same Commission on Audit (COA) decision No. 2009-121 dated October 29, 2009[1] that affirmed Notice of Disallowance No. 2006-002 dated January 18, 2006 assailed in *Dimapilis-Baldoz v. Commission on Audit*.[2]

In addition, the petitioner challenges the COA's Notice of Finality of Decision dated January 7, 2010, and the Orders of

[1] *Rollo*, pp. 51-56.

[2] G.R. No. 199114, July 16, 2013, 701 SCRA 318.

Execution dated October 26, 2011 and November 25, 2013, whereby she was held personally liable in her capacity as Director II of the Administrative Branch of the Pre-Employment Services Office of the Philippine Overseas Employment Administration (POEA) to refund to the Government the amount of ₱1,740,124.08 representing the salaries and benefits corresponding to the period from August 1999 until March 2004 unduly received by Leonel P. Labrador (Labrador) despite his having been dismissed from the service by virtue of his conviction by the Sandiganbayan on August 31, 1999.

Antecedents

For purposes of this resolution, we borrow the following factual antecedents from *Dimapilis-Baldoz v. Commission on Audit*:[3]

> Labrador was the former Chief of the POEA's Employment Services Regulation Division (ESRD). On May 2, 1997, then Labor Secretary Leonardo A. Quisumbing (Quisumbing) ordered his dismissal from service as he was found to have bribed a certain Madoline Villapando, an overseas Filipino worker, in the amount of ₱6,200.00 in order to expedite the issuance of her overseas employment certificate. Labrador's dismissal was affirmed on appeal by the Civil Service Commission (CSC) through CSC Resolution No. 03-0339 dated March 12, 2003, and his subsequent motion for reconsideration was denied through CSC Resolution No. 040547 dated May 17, 2004.
>
> Aside from the foregoing administrative proceedings, a criminal case for direct bribery was instituted against Labrador in view of the same infraction. Consequently, on August 31, 1999, the Sandiganbayan (SB) promulgated a Decision, convicting him of the aforementioned crime and thereby sentenced him to: (a) suffer an indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to two (2) years of *prision correccional*, as maximum; (b) pay a fine of ₱3,000.00; (c) suffer the penalty of temporary special disqualification from public office; and (d) pay costs. Labrador's motion for reconsideration was denied in a Resolution dated November 17, 1999, prompting him to elevate the matter to the Court.

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[3] *Id*. at 322-328.

In a Resolution dated January 26, 2000 (January 26, 2000 Resolution), the Court affirmed Labrador's conviction and subsequently denied his motion for reconsideration with finality on March 15, 2000. Likewise, in a Resolution dated June 28, 2000, the Court denied Labrador's motion for leave to file a second motion for reconsideration with motion for new trial and prayer for referral to the Court *En Banc*, resulting in the January 26, 2000 Resolution's entry of judgment. On October 26, 2000, the SB received copies of the same resolution and its corresponding entry of judgment through a Letter of Transmittal dated August 23, 2000 which contained an explicit directive from the Court for the SB to submit proof of execution within fifteen (15) days from receipt. As such, the SB immediately set the case for this purpose.

On February 26, 2001, Labrador's counsel *de oficio*, Atty. Vicente Espina, manifested in open court that Labrador desires to apply for probation in accordance with Presidential Decree No. (PD) 968, as amended by PD 1990 (Probation Law). Thus, in an Order of even date, the SB resolved to accord Labrador a period of fifteen (15) days within which to file such application, and, in the meantime, suspended the execution proceedings.

Eventually, upon favorable recommendation of the Parole and Probation Office, the SB, in a Resolution dated September 28, 2001, granted Labrador's application for probation and likewise cancelled the bail bond he posted for his provisional liberty.

Thereafter, at the end of Labrador's probation period, a Probation Officer's Final Report dated November 4, 2003 was issued, recommending that his probation be terminated and that he be discharged from its legal effects. The SB, however, withheld its approval and, instead, issued a Resolution dated March 2, 2004 (March 2, 2004 Resolution), stating that Labrador's application for probation was, in fact, erroneously granted due to his previous appeal from his judgment of conviction, in violation of Section 4 of the Probation Law. Further, owing to the probation officer's finding that Labrador continued to hold the position of POEA ESRD Chief despite him having been sentenced to suffer the penalty of temporary special disqualification from office, the SB directed that copies of the March 2, 2004 Resolution be furnished to Dimapilis-Baldoz, as POEA Administrator, as well as to the CSC Chairman for their information.

On March 9, 2004, Dimapilis-Baldoz received a copy of the said resolution and thereupon issued a Notice/Order of Separation dated

March 11, 2004 (Separation Order), relieving Labrador of his duties, viz.:

NOTICE/ORDER OF SEPARATION

TO : **MR. LEONEL P. LABRADOR**
No. 8 Luciano Street
Phase 5, Bahayang Pag-asa Subdivision
Molino, Bacoor
4102 Cavite

Anent Notice of Resolution dated 02 March 2004 Re: Criminal Case No. 19863 issued by the Sandiganbayan Fourth Division, Quezon City, resolving the finality and execution of the Court's August 31, 1999 decision carrying among other penalties ***temporary special disqualification from office***, please be informed that effective today, you are hereby considered dropped from the rolls and separated from the service.

As such, you are further instructed to turn over your duties and responsibilities and clear yourself of all property and money accountabilities with this Office.

For strict compliance.

Mandaluyong City, 11 March 2004.

Sgd. ROSALINDA DIMAPILIS-BALDOZ
Administrator

Incidents Before the COA

Almost a year later, or on February 7, 2005, COA State Auditor IV, Crescencia L. Escurel, issued Audit Observation Memorandum No. 2005-011 dated February 7, 2005 (COA Audit Memo) which contained her audit observations on the various expenditures of the POEA pertaining to the payment of salaries and benefits to Labrador for the period covering August 31, 1999 to March 15, 2004. The pertinent portions of the COA Audit Memo read as follows:

The accounts Government Equity and Salaries and Wages-Regular, Additional Compensation, Representation and Transportation Allowances and Other Personnel Benefits are overstated by ₱1,626,956.05, ₱57,143.03, ₱3,000.00, ₱16,050.00 and ₱11,800.00, respectively due to payment of salaries and wages, additional compensation, allowances and other benefits

to an official from August 31, 1999 to March 15, 2004, contrary to the Sandiganbayan Decision dated August 31, 1999.

x x x x x x x x x

In view thereof, justification is desired why Mr. Leonel Labrador, formerly Chief General Services Division and Employment Services Regulation Division was allowed to continue in the service and receive his salaries, additional compensation, RATA and other personnel benefits from August 31, 1999 to the time he was terminated from office effective March 9, 2004 (Note: The last salary received was even up to March 15, 2004) in the total amount of ₱1,714,949.08, including other emoluments such as allowances, 13th month pay and other personnel benefits granted him such as medical and rice allowances, incentive allowances, etc. in the amount of ₱565,795.05. Pursuant to the August 31, 1999 judgment of conviction, which had long become final and executory, Mr. Labrador is considered terminated from the service and is no longer entitled to continue to draw his salaries thereafter up to March 15, 2004. x x x

Corollary to this, Book V Title I Subtitle B Chapter 9, Sec. 52, EO 292 and Sec. 103 PD 1445 provides that expenditures of government funds or uses of government property in violation of law or regulations shall be *a personal liability of the official or employee found to be directly responsible therefore*. (Underscoring and italics in the original)

Based on these observations, the COA issued a Notice of Disallowance (Notice of Disallowance) on January 18, 2006, finding Dimapilis-Baldoz, among other POEA employees, personally liable for the salaries and other benefits unduly received by Labrador in the amount of ₱1,740,124.08, paid through various checks issued from August 1999 to March 15, 2004.

Through a letter dated March 3, 2006, Dimapilis-Baldoz sought the reconsideration of the Notice of Disallowance, asserting that the POEA should not be held liable for the refund of the foregoing amount since Labrador's employment was fully and promptly terminated upon receipt of the SB's March 2, 2004 Resolution.

However, on October 29, 2009, the COA issued Decision No. 2009-121 (COA Decision) which affirmed the Notice of Disallowance and reiterated that the amount covering the salaries and benefits of

Labrador should not have been paid to him from August 1999 to March 31, 2004 pending final resolution of the criminal case against him. The COA pointed out that Labrador should not have reported for work while he was under probation since his probation did not obliterate the crime for which he was convicted, more so his penalty of dismissal from the service.

On January 26, 2010, the POEA moved for the reconsideration (POEA's Motion for Reconsideration) of the COA Decision. On even date, POEA Administrator Jennifer Jardin-Manalili (Jardin-Manalili), who took over the post of Dimapilis-Baldoz, wrote a letter to Audit Team Leader Evelyn V. Menciano, requesting that the execution of the COA Decision be held in abeyance pending resolution of the POEA's Motion for Reconsideration. In a letter dated May 31, 2000, the COA, however, no longer entertained the said motion in view of the issuance by the COA Secretary of a Notice of Finality of Decision dated January 7, 2010, stating that the COA Decision had already become final and executory since no motion for reconsideration or appeal was filed within the reglementary period.

Undaunted, Jardin-Manalili, through a letter dated June 21, 2010, again implored the COA to resolve POEA's Motion for Reconsideration on its merits and not to deny it outright on a technicality. Yet, the COA no longer responded to the said plea, prompting Dimapilis-Baldoz to file [a] petition for *certiorari*.

In order to enforce its Decision No. 2009-121, the COA subsequently issued the Order of Execution on October 26, 2011.[4]

On July 16, 2013, the Court promulgated the ruling in *Dimapilis-Baldoz v. Commission on Audit*, disposing:

WHEREFORE, the petition is **PARTLY GRANTED**. Accordingly, Notice of Disallowance No. 2006-002 dated January 18, 2006 and Decision No. 2009-121 dated October 29, 2009 issued by respondent Commission on Audit is **AFFIRMED** with **MODIFICATION**, (*a*) deleting the portions pertaining to petitioner Rosalinda Dimapilis-Baldoz's personal liability; and (*b*) adjusting the proper period of disallowance from the date of Leonel P. Labrador's dismissal on May 2, 1997. The foregoing is without prejudice to any

[4] *Rollo*, pp. 67-68.

subsequent action or proceeding to recover any undue amount/s received by Labrador.

SO ORDERED.[5]

The entry of judgment in *Dimapilis-Baldoz v. Commission on Audit* was made on August 13, 2013.[6] On November 25, 2013, the COA issued its assailed Order of Execution to enforce its decision against other responsible officers of the POEA except the petitioner in *Dimapilis-Baldoz v. Commission on Audit*.[7]

The petitioner, having become aware of the foregoing developments, wrote a letter dated January 2, 2014 to COA Chairperson Grace Pulido-Tan seeking the reconsideration of the November 25, 2013 Order of Execution on several grounds, namely: lack of due process as far as she was concerned; regularity in the performance of her official duties; and her good faith.[8]

In the Memorandum dated January 7, 2015,[9] the COA denied the petitioner's request for reconsideration.

Hence, the petitioner has come to the Court raising the following issues for consideration and resolution, namely:

I

RESPONDENT COA, GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, IN ISSUING AOM NO. 2005-011 AND ND 2006-002 AND THEREAFTER FINDING THE PETITIONER PERSONALLY LIABLE DESPITE THE FACT THAT SHE ACTED IN GOOD FAITH AND WITH DUE DILIGENCE IN THE LAWFUL EXERCISE OF HER DUTIES AND FUNCTIONS AS THE FORMER DIRECTOR II OF THE POEA ADMINISTRATIVE

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[5] *Supra* note 2, at 339-340.

[6] *Rollo*, p. 8.

[7] *Id*. at 69-71.

[8] *Id*. at 72-75.

[9] *Id*. at 80-81.

BRANCH IN CERTIFYING THAT THE PAYROLL IS CORRECTLY STATED AND THAT SERVICES HAVE BEEN DULY RENDERED BY LEONEL P. LABRADOR, FORMER CHIEF OF THE POEA EMPLOYMENT SERVICES AND REGULATION DIVISION, FOR THE PAYMENT OF THE LATTER'S SALARIES, WAGES AND OTHER BENEFITS FROM 16 SEPTEMBER 2002 TO MARCH 2004.

II

THE HONORABLE RESPONDENT COA, GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, IN DISALLOWING THE SUBJECT PAYMENTS AND MAKING THE PETITIONER PERSONALLY LIABLE TO PAY THE CORRESPONDING AMOUNTS FROM 16 SEPTEMBER 2002 TO MARCH 2004, WITH FURTHER DIRECTIVE TO WITH[H]OLD THE PAYMENT OF SALARIES DUE TO THE PETITIONER FOR THE SETTLEMENT OF HER LIABILITY AS STATED IN THE ND NO. 2006-002.

TO SUSTAIN THE SUBJECT COA'S ND WOULD RESULT IN THE DENIAL OF DUE PROCESS ON THE PART OF THE PETITIONER AS SHE WAS NEITHER DULY NOTIFIED OF THE CRIMINAL PROCEEDINGS AGAINST MR. LEONEL LABRADOR WHILE HE WAS WORKING AT THE POEA NOR DID SHE RECEIVE ANY NOTICE/ORDER THAT MR. LABRADOR BE DISMISSED FROM THE SERVICE AT THE TIME SHE CERTIFIED THE PAYROLLS FROM 16 SEPTEMBER 2002 TO MARCH 2004. MORE SO, PETITIONER WAS NOT FURNISHED COPIES OF DECISION NO. 2009-121 DATED OCTOBER 29, 2009 AND NOTICE OF FINALITY OF DECISION DATED JANUARY 7, 2010 AND RESPONDENT COA ORDER OF EXECUTION DATED OCTOBER 26, 2011.[10]

The petitioner argues that she acted in good faith and with due diligence in certifying to the correctness of the payrolls for the period September 16, 2002 to March 2004; that Labrador had rendered service during said period based on his daily time records duly signed by his supervisor, but whose copies were no longer available for presentation, as certified by Julie Ann

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

J. Aguila, Chief of the POEA Human Resource Development Division;[11] that in lieu of such records, she was submitting other documents to show that Labrador had rendered service in the period from September 16, 2002 to March 2004, specifically: (*a*) a certified true copy of Labrador's Service Record covering his employment from December 6, 1983 to March 11, 2004;[12] (*b*) his Record of Leaves of Absence from September 2002 to February 2004;[13] (*c*) his Performance Evaluation Reports for the years 2002 and 2003 (those for the year 2004 were excluded because he had been separated from the service on March 11, 2004);[14] and (*d*) the Special Orders issued by the POEA from 1999 to 2002 showing Labrador's assignment to various offices of the POEA.[15]

The petitioner insists that during her tenure as Director II of the POEA she had no information, document or record showing that there had been a pending criminal case against Labrador, and that he had been discharged from the service.[16] She also maintains that the POEA was not furnished with copies of the various notices and orders, decisions or resolutions of the Sandiganbayan; hence, she had no basis or authority to stop the payment to Labrador of the disallowed salaries, wages and other benefits until the POEA's actual receipt of the resolution dated March 2, 2004 on March 9, 2004 from the Sandiganbayan.[17] She points out that she was on foreign assignment, specifically deployed to the Philippine Overseas Labor Office in Jeddah, Kingdom of Saudi Arabia, in the period from October 2008 to October 31, 2010;[18] and that she was not notified and had no

[11] *Id*. at 132.

[12] *Id*. at 133.

[13] *Id*. at 135-139.

[14] *Id*. at 140-150.

[15] *Id*. at 151-153.

[16] *Id*. at 22.

[17] *Id*. at 24.

[18] *Id*. at 154-159.

information that the COA had issued Decision No. 2009-121 dated October 29, 2009, the Notice of Finality of Decision dated January 7, 2010, and the Order of Execution dated October 26, 2011.[19]

In their comment, the respondents assert that the petitioner was not denied due process because the copy of Notice of Disallowance No. 2006-002 forwarded by POEA Administrator Hans Leo J. Cacdac to the Audit Team Leader contained her signature across her name, thereby indicating that she had been properly served in accordance with Rule 13 of the *Rules of Court*;[20] that the POEA filed a motion for reconsideration dated March 3, 2006 in her behalf to seek, among others, the reversal of Notice of Disallowance No. 2006-002, and another motion for reconsideration dated February 2, 2010 vis-a-vis Decision No. 2009-121;[21] that she could no longer assail Decision No. 2009-121 because the Court had affirmed it with finality in *Dimapilis-Baldoz v. Commission on Audit*;[22] and that an error of judgment was not the proper subject of a petition for *certiorari*.[23]

On April 14, 2015, the Court issued a temporary restraining order to enjoin the respondents from enforcing the assailed Orders of Execution dated October 26, 2011 and November 25, 2013.[24]

Issue

Did the COA commit grave abuse of discretion in holding the petitioner personally liable to refund the disallowed salary payments?

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[19] *Id*. at 28-29.

[20] *Id*. at 190.

[21] *Id*.

[22] *Id*. at 191-192.

[23] *Id*. at 193-194.

[24] *Id*. at 162-163.

Ruling of the Court

The petition for *certiorari* is partly meritorious.

The petitioner is essentially assailing Decision No. 2009-121 and the Order of Execution dated November 25, 2013 she had received on December 18, 2013.

Does she do so in a timely manner?

The time within which an aggrieved party may seek the review of an adverse judgment or final order or resolution through the special civil action governed by Rule 64 of the *Rules of Court* is fixed in Section 3, which states:

> Section 3. *Time to file petition*. - The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

Considering that the petitioner dispatched her letter to COA Chairperson Pulido-Tan seeking the reconsideration of the November 25, 2013 Order of Execution on January 2, 2014, or 15 days from her receipt of the Order of Execution on December 18, 2013, and further considering that she received the Memorandum denying the letter of reconsideration on February 12, 2015, she had only 16 days remaining, or until February 28, 2015, within which to file the petition for *certiorari* under Rule 64.

Yet, because she actually filed the petition only on March 31, 2015, or 31 days beyond the reglementary period, the petition would be dismissible for being filed out of time, with the result of rendering the Order of Execution dated November 25, 2013 unassailable and immutable as to her. Also, and more significantly, Decision No. 2009-121 had by then attained finality and become immutable. As such, the present recourse *might not*

avail her anymore, for a decision or final order that has acquired finality may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it is made by the court that rendered it or by the Highest Court of the land. Any act that violates this principle of immutability must be immediately struck down.[25] The doctrine of immutability of a final judgment or order serves a *two-fold* purpose, namely: (1) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (2) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why the courts exist. Controversies cannot drag on indefinitely because the rights and obligations of every litigant must not hang in suspense for an indefinite period of time. The doctrine is not a mere technicality to be easily brushed aside, but a matter of public policy as well as a time-honored principle of procedural law.[26] The only exceptions to the rule on the immutability of final judgments are: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries that cause no prejudice to any party; and (3) void judgments.[27]

Nonetheless, the Court has recognized several justifications to suspend the strict adherence with rigid procedural rules like the doctrine of immutability, such as: (*a*) matters of life, liberty, honor or property; (*b*) the existence of special or compelling circumstances; (*c*) the merits of the case; (*d*) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (*e*) lack of any showing that the review sought is merely frivolous and dilatory; and (*f*) the other party will not be unjustly prejudiced thereby.[28]

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[25] *FGU Insurance Corporation v. Regional Trial Court of Makati City, Branch 66*, G.R. No. 161282, February 23, 2011, 644 SCRA 50, 56.

[26] *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, December 4, 2009, 607 SCRA 200, 213-214.

[27] *Mocorro, Jr. v. Ramirez*, G.R. No. 178366, July 28, 2008, 560 SCRA 362, 373.

[28] *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, October 12, 2010, 632 SCRA 727, 761, citing *Barnes v. Padilla*, G.R. No. 160753, September 30, 2004, 439 SCRA 675, 686-687.

Upon careful appreciation of the records, the Court considers justifications (*a*), (*b*) and (*c*) to have relevance to the petitioner's situation.

First of all, the adverse result would surely make her personally liable for a substantial sum of monetary liability from which she had not directly benefited, thereby prejudicing her right to property.

Secondly, the petitioner's good faith in certifying to the correctness of the payrolls based on *available* records about Labrador having actually reported to work, and on her absolute lack of knowledge of his having been dismissed and of the pendency of the criminal case in the Sandiganbayan constituted compelling circumstances that justified applying the exception in her favor. At the time she made the certifications of the payrolls she relied on the relevant public and official documents showing that Labrador had rendered actual service during the periods concerned.[29] Her honest belief that Labrador was legally entitled to the salary payments thereby became established.[30] Moreover, Labrador's 201 File did not contain any indication of the criminal case pending against him in the Sandiganbayan. Her claim of having been actually apprised of his criminal case only on March 9, 2004 after the POEA received the copy of the March 2, 2004 resolution of the Sandiganbayan has not been rebutted.

Only convincing proof of the petitioner's malice or bad faith in the performance of her duties could have warranted the rejection of her plea of good faith. The Court has emphatically stated in *Dimapilis-Baldoz v. Commission on Audit*,[31] *viz.*:

It is a standing rule that every public official is entitled to the presumption of good faith in the discharge of official duties, such

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[29] *Rollo*, pp. 133-153.

[30] *Manila International Airport Authority v. Commission on Audit*, G.R. No. 194710, February 14, 2012, 665 SCRA 653, 678.

[31] *Supra* note 2, at 337 (the italicized portions in bold are in the original text).

that, in the absence of any proof that a public officer has acted with malice or bad faith, he should not be charged with personal liability for damages that may result from the performance of an official duty. ***Good faith is always presumed and he who alleges the contrary bears the burden to convincingly show that malice or bad faith attended the public officer's performance of his duties.***

But the COA did not adduce proof of her malice or bad faith. At any rate, not extending the benefit of good faith and regular performance of duty to the petitioner herein would be unfair and unjust if the Court absolved the petitioner in *Dimapilis-Baldoz v. Commission on Audit* from personal liability for the same disallowed salaries of Labrador on the basis of good faith.

And, thirdly, the fact that the petitioner was on foreign assignment when the COA rendered the assailed issuances plausibly explained why she did not seasonably assail or oppose the disallowances. We point out that the insistence of the COA that the POEA had filed in her behalf a motion for reconsideration during her absence from the country on a foreign assignment without the indication that she had expressly authorized the POEA to do so did not suffice to now defeat her right to be heard. Verily, only she could have exercised the right to be heard upon a matter that would subject her under the law to *personal* liability.

In light of the foregoing circumstances, the COA's directive to withhold the petitioner's salary was void and produced no legal effect. As such, the assailed COA issuances did not attain finality and immutability as to her. Such consequence became unavoidable, as the Court has aptly declared in *Land Bank of the Philippines v. Orilla*:[32]

A void judgment or order has no legal and binding effect, force or efficacy for any purpose. In contemplation of law, it is non-existent. Such judgment or order may be resisted in any action or proceeding whenever it is involved. It is not even necessary to take any steps to vacate or avoid a void judgment or final order; it may simply be ignored.

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[32] G.R. No. 194168, February 13, 2013, 690 SCRA 610, 618-619.

In *Metropolitan Waterworks & Sewerage System v. Sison*, this Court held that:

> x x x "[A] void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It has no legal or binding effect or efficacy for any purpose or at any place. It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. All proceedings founded on the void judgment are themselves regarded as invalid. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there were no judgments. It, accordingly, leaves the parties litigants in the same position they were in before the trial."

Accordingly, a void judgment is no judgment at all. It cannot be the source of any right nor of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. Hence, it can never become final, and any writ of execution based on it is void: "*x x x it may be said to be a lawless thing which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head*."

WHEREFORE, the Court **PARTIALLY GRANTS** the petition for *certiorari*; and **AFFIRMS** Decision No. 2009-121 dated October 29, 2009 rendered by the Commission on Audit affirming Notice of Disallowance No. 2006-002 dated January 18, 2006, the Notice of Finality of Decision dated January 7, 2010, and the Orders of Execution dated October 26, 2011 and November 25, 2013 subject to the **MODIFICATION** that the portion pertaining to the personal liability of petitioner Nini A. Lanto is **DELETED**.

No pronouncement on costs of suit.

SO ORDERED.

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

Jardeleza, *J.*, no part, prior OSG action.

EN BANC

[G.R. No. 220598. April 18, 2017]

GLORIA MACAPAGAL- ARROYO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES AND THE SANDIGANBAYAN, (First Division),** *respondents.*

[G.R. No. 220953. April 18, 2017]

BENIGNO B. AGUAS, *petitioner, vs.* **SANDIGANBAYAN (First Division),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI;* MAY BE INVOKED TO ASSAIL THE DENIAL OF A DEMURRER TO EVIDENCE THAT IS TAINTED WITH GRAVE ABUSE OF DISCRETION OR EXCESS OF JURISDICTION, OR OPPRESSIVE EXERCISE OF JUDICIAL AUTHORITY.— [T]he prohibition contained in Section 23, Rule 119 of the *Rules of Court* is not an insuperable obstacle to the review by the Court of the denial of the demurrer to evidence through *certiorari*. We have had many rulings to that effect in the past. For instance, in *Nicolas v. Sandiganbayan*, the Court expressly ruled that the petition for *certiorari* was the proper remedy to assail the denial of the demurrer to evidence that was tainted with grave abuse of discretion or excess of jurisdiction, or oppressive exercise of judicial authority.

2. CRIMINAL LAW; REPUBLIC ACT NO. 7080 (THE PLUNDER LAW); PLUNDER; THE IDENTIFICATION IN THE INFORMATION OF THE PUBLIC OFFICIAL AS THE MAIN PLUNDERER AMONG THE SEVERAL INDIVIDUALS CHARGED IS REQUIRED.— [B]ecause plunder is a crime that only a public official can commit by amassing, accumulating, or acquiring ill-gotten wealth in the aggregate amount or total value of at least ₱50,000,000.00,

the identification in the information of such public official as the main plunderer among the several individuals thus charged is logically necessary under the law itself. In particular reference to Criminal Case No. SB-12-CRM-0174, the individuals charged therein – including the petitioners – were 10 public officials; hence, it was only proper to identify the main plunderer or plunderers *among the 10 accused* who herself or himself had amassed, accumulated, or acquired ill-gotten wealth with the total value of at least ₱50,000,000.00.

3. ID.; ID.; ID.; RAIDS ON THE PUBLIC TREASURY; REQUIRE PERSONAL BENEFIT.— The phrase *raids on the public treasury* as used in Section 1(d) of R. A. No. 7080 is itself ambiguous. In order to ascertain the objective meaning of the phrase, the act of raiding the public treasury cannot be divided into parts. This is to differentiate the predicate act of *raids on the public treasury* from other offenses involving property, like robbery, theft, or *estafa*. Considering that R.A. No. 7080 does not expressly define this predicate act, the Court has necessarily resorted to statutory construction. In so doing, the Court did not adopt the State's submission that personal benefit on the part of the accused need not be alleged and shown because doing so would have defeated the clear intent of the law itself, which was to punish the amassing, accumulating, or acquiring of ill-gotten wealth in the aggregate amount or total value of at least ₱50,000,000.00 by any combination or series of acts of misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury. x x x [T]he rules of statutory construction as well as the deliberations of Congress indicated the intent of Congress to require personal benefit for the predicate act of *raids on the public treasury*.

4. ID.; REVISED PENAL CODE; MALVERSATION; ELEMENTS.— Malversation is defined and punished under Article 217 of the *Revised Penal Code* x x x. The elements of malversation are that: (a) the offender is an accountable public officer; (b) he/she is responsible for the misappropriation of public funds or property through intent or negligence; and (c) he/she has custody of and received such funds and property by reason of his/her office.

5. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; PROHIBITION AGAINST DOUBLE

JEOPARDY; BARS NOT ONLY A NEW AND INDEPENDENT PROSECUTION BUT ALSO AN APPEAL IN THE SAME ACTION AFTER JEOPARDY HAD ATTACHED.— [T]he consideration and granting of the motion for reconsideration of the State will amount to the violation of the constitutional guarantee against double jeopardy. The Court's consequential dismissal of Criminal Case No. SB-12-CRM-0174 as to the petitioners *for insufficiency of evidence* amounted to their *acquittal* of the crime of plunder charged against them. x x x The constitutional prohibition against placing a person under double jeopardy for the same offense bars not only a new and independent prosecution but also an appeal in the same action after jeopardy had attached. As such, every *acquittal* becomes final *immediately upon promulgation* and cannot be recalled for correction or amendment. With the acquittal being immediately final, granting the State's motion for reconsideration in this case would violate the Constitutional prohibition against double jeopardy because it would effectively reopen the prosecution and subject the petitioners to a second jeopardy *despite their acquittal*. x x x [T]he Constitutional prohibition against double jeopardy provides to the accused three related protections, specifically: *protection against a second prosecution for the same offense after acquittal; protection against a second prosecution for the same offense after conviction; and protection against multiple punishments for the same offense*.

LEONEN, *J.*, *dissenting opinion*:

1. CRIMINAL LAW; REPUBLIC ACT NO. 7080 (THE ANTI-PLUNDER LAW); PLUNDER; MAY BE COMMITTED COLLECTIVELY IN CONNIVANCE WITH OTHERS, AND THE LAW MAKES NO DISTINCTION BETWEEN THE CONSPIRATORS.— The law x x x requires a showing that a person holds public office. He or she may act alone or in conspiracy with others. Thus, the Anti-Plunder Law explicitly recognizes that plunder may be committed collectively – "in connivance with" others. In doing so, it makes no distinction between the conspirators. Glaringly absent is any mention of a so-called "main plunderer" or specific "personal benefit" gained by any confederate to the crime. It is also silent on the manner by which conspirators organized themselves, or otherwise went about committing the offense. Thus, there is no need to show that plunder is centralized. All that Section 2 requires is proof

that the accused acted out of a common design to amass, accumulate, or acquire ill-gotten wealth.

2. ID.; ID.; ID.; COMMITTED THROUGH A COMBINATION OR SERIES OF OVERT OR CRIMINAL ACTS.— [P]lunder is committed x x x "through a *combination* or *series* of overt or criminal acts as described in Section 1(d) of Republic Act No. 7080." "Combination," as used in Section 2 of the Anti-Plunder Law, was explained in *Estrada vs. Sandiganbayan* to refer to "at least any two different predicate acts in any of said items" in Section 1(d). "Series" was explained as synonymous to "on several instances" or a "repetition of the same predicate act in any of the items in Section 1(d) of the law." The "overt or criminal acts described in Section 1(d)" are the following: a. Misappropriating, converting, misusing, or malversing public funds; or *raiding on the public treasury*; b. Receiving any commission or kickbacks from a government contract or project, or by reason of one's office or position; *c. Fraudulently disposing government assets*; d. Obtaining any interest or participating in any business undertaking; e. Establishing monopolies or implementing decrees that benefit particular persons or interests; and *f. Taking undue advantage of one's official position or influence to enrich oneself at the expense of the People and the Republic.*

3. ID.; ID.; ID.; THE THRESHOLD AMOUNT MUST BE IN THE AGGREGATE AMOUNT OR TOTAL VALUE OF AT LEAST FIFTY MILLION PESOS.— [T]he threshold amount for plunder x x x must be "in the aggregate amount or total value of at least Fifty million pesos (₱50,000,000.00)[.]" The law speaks of an "aggregate amount." It also uses the term, "total value," to highlight how the amount must be counted in its whole and not severed into parts. How this Court has replaced the statutory requirement of "aggregate amount" or "total value" to mere "aliquot" shares is bewildering.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; FORMER CONVICTION OR ACQUITTAL; DOUBLE JEOPARDY; ELEMENTS; LEGAL JEOPARDY, WHEN PRESENT.— Section 7 of Rule 117 of the Revised Rules on Criminal Procedure identifies three (3) elements of double jeopardy: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly

terminated; and, (3) a second jeopardy must be for the same offense as that in the first. Legal jeopardy attaches only (a) upon a valid indictment, (b) before a competent court, (c) after arraignment, (d) when a valid plea has been entered, and (e) when the case was dismissed or otherwise terminated without the express consent of the accused.

5. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; REQUIRES THAT BOTH PARTIES HAVE A REAL AND FAIR OPPORTUNITY TO BE HEARD.— Due process requires that both parties have a real and fair opportunity to be heard. "The State, like the accused[,] is also entitled to due process in criminal cases." x x x The state must be afforded the right to prosecute, present, and prove its case. Just as importantly, the prosecution must be able to fully rely on expressed legal provisions, as well as on settled and standing jurisprudential principles. It should not be caught in a bind by a sudden and retroactive imposition of additional requirements for successful prosecution.

6. CRIMINAL LAW; REPUBLIC ACT NO. 7080 (THE ANTI-PLUNDER LAW); PLUNDER; MAY BE COMMITTED IN CONSPIRACY WITH OTHERS AND IN CONSPIRACY, EACH CONSPIRATOR IS CONSIDERED A PRINCIPAL ACTOR OF THE CRIME.— Plunder may be committed in connivance or conspiracy with others. The share that each accused received is not the pivotal consideration. What is more crucial is that the *total amount* amassed is at least ₱50 million. In a conspiracy, the act of one is the act of all. Each conspirator is considered a principal actor of the crime. x x x Section 2 of the Anti-Plunder Law focuses on the "aggregate amount or total value" amassed, accumulated, or acquired, not its severed distributions among confederates. Thus, in the present case, it is unnecessary to specify whether the allegedly amassed amount of ₱365,997,915.00 ultimately came to the possession of one, some, or all of the accused.

7. ID.; ID.; ID.; RAIDS ON THE PUBLIC TREASURY; DOES NOT INHERENTLY ENTAIL TAKING FOR PERSONAL GAIN.— "Raids on the public treasury" must be understood in its plain meaning. There is no need to derive its meaning from the other words mentioned in Section 1(d)(1) of the Anti-Plunder Law. It does not inherently entail taking *for personal*

gain. x x x [T]here are no words with which the term "raids on the public treasury," as mentioned in Section 1(d)(1) of the Anti-Plunder Law are to be associated, thereby justifying the application of *noscitur a sociis*. Misappropriation, conversion, misuse, and malversation of public funds are items enumerated distinctly from "raids on the public treasury," they being separated by the disjunctive "or." Therefore, there is no basis for insisting upon the term "raids on the public treasury" the concept of personal benefit. Even if the preceding terms were to be associated with "raids on the public treasury," it does not follow that "personal benefit" becomes its element. x x x This Court can also apply by analogy the principles governing the crime of theft. Like in plunder, theft involves the unlawful taking of goods belonging to another. In theft, the mere act of taking—regardless of actual gain—already consummates the crime. x x x This standard for theft takes on greater significance in plunder. x x x Here, public funds were taken from the government. Theft involves larceny against individuals; plunder involves pillage of the State. Certainly, it is much more depraved and heinous than theft x x x. Plunder is a betrayal of public trust. Thus, it cannot require an element that a much lesser crime of the same nature does not even require. Ruling otherwise would "introduce a convenient defense for the accused which does *not* reflect any legislated intent." To raid means to "steal from, break into, loot, [or] plunder." x x x The specific phrase used in the Anti-Plunder Law – "raids on the public treasury" – is of American origin. x x x In its plain meaning, and taking its history and etymological development into account, "raids on the public treasury" refers to dipping one's hands into public funds, taking them as booty. In the context of the Anti-Plunder Law, this may be committed by a public officer through fraud, stealth, or secrecy, done over a period of time.

8. REMEDIAL LAW; CRIMINAL PROCEDURE; TRIAL; DEMURRER TO EVIDENCE; AN APPEAL TO A DENIAL OF DEMURRER TO EVIDENCE IS PROSCRIBED, AND THE ACCUSED'S RECOURSE IS TO PRESENT EVIDENCE AND REBUT THE PROSECUTION'S EVIDENCE.— In issuing the Resolutions denying petitioners' demurrers to evidence, the Sandiganbayan acted well-within its jurisdiction and competence. It is not for us to substitute our wisdom for that of the court which presided over the full

conduct of trial, as well as the reception and scrutiny of evidence. The rule proscribing appeals to denials of demurrers to evidence is plain and basic. An accused's recourse is to present evidence and to rebut the prosecution's evidence. The petitioners here failed to establish an exceptional predicament.

APPEARANCES OF COUNSEL

Flaminiano Arroyo and Dueñas for petitioner in G.R. No. 220598.

Estelito P. Mendoza, Susan A. Mendoza, Orlando A. Santiago, Lorenzo G. Timbol, Hyacinth E. Rafael-Antonio and *Leo Aries Wynner O. Santos* for petitioner in G.R. No. 220598.

Moises S. Tolentino, Jr., for petitioner in G.R. No. 220593.

The Solicitor General for public respondents.

R E S O L U T I O N

BERSAMIN, *J.*:

On July 19, 2016, the Court promulgated its decision, disposing:

WHEREFORE, the Court **GRANTS** the petitions for *certiorari*; **ANNULS** and **SETS ASIDE** the resolutions issued in Criminal Case No. SB-12-CRM-0174 by the *Sandiganbayan* on April 6, 2015 and September 10, 2015; **GRANTS** the petitioners' respective demurrers to evidence; **DISMISSES** Criminal Case No. SB-12-CRM-0174 as to the petitioners **GLORIA MACAPAGAL-ARROYO** and **BENIGNO AGUAS** for insufficiency of evidence; **ORDERS** the immediate release from detention of said petitioners; and **MAKES** no pronouncements on costs of suit.

SO ORDERED.[1]

On August 3, 2016, the State, through the Office of the Ombudsman, has moved for the reconsideration of the decision, submitting that:

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[1] *Rollo* (G.R. No. 220953), Vol. III, p. 1866.

I. THIS HONORABLE COURT'S GIVING DUE COURSE TO A CERTIORARI ACTION ASSAILING AN INTERLOCUTORY ORDER DENYING DEMURRER TO EVIDENCE VIOLATES RULE 119, SECTION 23 OF THE RULES OF COURT, WHICH PROVIDES THAT AN ORDER DENYING THE DEMURRER TO EVIDENCE SHALL NOT BE REVIEWABLE BY APPEAL OR BY CERTIORARI *BEFORE* JUDGMENT.

II. THE HONORABLE COURT COMMITTED GRAVE ERRORS WHICH AMOUNT TO A VIOLATION OR DEPRIVATION OF THE STATE'S FUNDAMENTAL RIGHT TO DUE PROCESS OF LAW.

A. THE DECISION REQUIRES *ADDITIONAL* ELEMENTS IN THE PROSECUTION OF PLUNDER, *VIZ*. IDENTIFICATION OF THE MAIN PLUNDERER AND PERSONAL BENEFIT TO HIM/HER, BOTH OF WHICH ARE NOT PROVIDED IN THE TEXT OF REPUBLIC ACT (R.A.) NO. 7080.

B. THE EVIDENCE PRESENTED BY THE PROSECUTION WAS NOT FULLY TAKEN INTO ACCOUNT, INCLUDING BUT NOT LIMITED TO THE IRREGULARITIES IN THE CONFIDENTIAL/INTELLIGENCE FUND (CIF) DISBURSEMENT PROCESS, QUESTIONABLE PRACTICE OF CO-MINGLING OF FUNDS AND AGUAS' REPORTS TO THE COMMISSION ON AUDIT (COA) THAT BULK OF THE PHP365,997,915.00 WITHDRAWN FROM THE PHILIPPINE CHARITY SWEEPSTAKES OFFICE'S (PCSO) CIF WERE DIVERTED TO THE ARROYO-HEADED OFFICE OF THE PRESIDENT.

C. ARROYO AND AGUAS, BY INDISPENSABLE COOPERATION, IN CONSPIRACY WITH THEIR CO-ACCUSED IN SB-12-CRM-0174, COMMITTED PLUNDER VIA A COMPLEX ILLEGAL SCHEME WHICH DEFRAUDED PCSO IN HUNDREDS OF MILLIONS OF PESOS.

D. EVEN ASSUMING THAT THE ELEMENTS OF PLUNDER WERE NOT PROVEN BEYOND REASONABLE DOUBT, THE EVIDENCE PRESENTED BY THE PEOPLE SHOWS, BEYOND REASONABLE DOUBT, THAT ARROYO, AGUAS AND THEIR CO-ACCUSED IN SB-12-CRM-0174 ARE GUILTY OF MALVERSATION.[2]

In contrast, the petitioners submit that the decision has effectively barred the consideration and granting of the motion for reconsideration of the State because doing so would amount to the re-prosecution or revival of the charge against them despite their acquittal, and would thereby violate the constitutional proscription against double jeopardy.

Petitioner Gloria M. Macapagal-Arroyo (Arroyo) points out that the State miserably failed to prove the *corpus delicti* of plunder; that the Court correctly required the identification of the main plunderer as well as personal benefit on the part of the raider of the public treasury to enable the successful prosecution of the crime of plunder; that the State did not prove the conspiracy that justified her inclusion in the charge; that to sustain the case for malversation against her, in lieu of plunder, would violate her right to be informed of the accusation against her because the information did not necessarily include the crime of malversation; and that even if the information did so, the constitutional prohibition against double jeopardy already barred the re-opening of the case for that purpose.

Petitioner Benigno B. Aguas echoes the contentions of Arroyo in urging the Court to deny the motion for reconsideration.

In reply, the State avers that the prohibition against double jeopardy does not apply because it was denied its day in court, thereby rendering the decision void; that the Court should re-examine the facts and pieces of evidence in order to find the petitioners guilty as charged; and that the allegations of the

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[2] *Rollo* (G.R. No. 220598), Vol. VI, pp. 4158-4159.

information sufficiently included all that was necessary to fully inform the petitioners of the accusations against them.

Ruling of the Court

The Court **DENIES** the motion for reconsideration for its lack of merit.

To start with, the State argues that the consolidated petitions for *certiorari* were improper remedies in light of Section 23, Rule 119 of the *Rules of Court* expressly prohibiting the review of the denial of their demurrer prior to the judgment in the case either by appeal or by *certiorari*; that the Court has thereby limited its own power, which should necessarily prevent the giving of due course to the petitions for *certiorari*, as well as the undoing of the order denying the petitioners' demurrer to evidence; that the proper remedy under the *Rules of Court* was for the petitioners to proceed to trial and to present their evidence-in-chief thereat; and that even if there had been grave abuse of discretion attending the denial, the Court's *certiorari* powers should be exercised only upon the petitioners' compliance with the stringent requirements of Rule 65, particularly with the requirement that there be no plain, speedy or adequate remedy in the ordinary course of law, which they did not establish.

Section 23, Rule 119 of the *Rules of Court*, pertinently provides:

Section 23. *Demurrer to evidence.* – x x x

x x x x x x x x x

The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment. (n)

The argument of the State, which is really a repetition of its earlier submission, was squarely resolved in the decision, as follows:

The Court holds that it should take cognizance of the petitions for *certiorari* because the *Sandiganbayan*, as shall shortly be demonstrated, gravely abused its discretion amounting to lack or excess of jurisdiction.

The special civil action for *certiorari* is generally not proper to assail such an interlocutory order issued by the trial court because of the availability of another remedy in the ordinary course of law. Moreover, Section 23, Rule 119 of the *Rules of Court* expressly provides that "the order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by *certiorari* before judgment." It is not an insuperable obstacle to this action, however, that the denial of the demurrers to evidence of the petitioners was an interlocutory order that did not terminate the proceedings, and the proper recourse of the demurring accused was to go to trial, and that in case of their conviction they may then appeal the conviction, and assign the denial as among the errors to be reviewed. Indeed, it is doctrinal that the situations in which the writ of *certiorari* may issue should not be limited, because to do so –

> x x x would be to destroy its comprehensiveness and usefulness. So wide is the discretion of the court that authority is not wanting to show that *certiorari* is more discretionary than either prohibition or *mandamus*. **In the exercise of our superintending control over other courts, we are to be guided by all the circumstances of each particular case 'as the ends of justice may require.' So it is that the writ will be granted where necessary to prevent a substantial wrong or to do substantial justice**.

The Constitution itself has imposed upon the Court and the other courts of justice the duty to correct errors of jurisdiction as a result of capricious, arbitrary, whimsical and despotic exercise of discretion by expressly incorporating in Section 1 of Article VIII the following provision:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

The exercise of this power to correct grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any

branch or instrumentality of the Government cannot be thwarted by rules of procedure to the contrary or for the sake of the convenience of one side. This is because the Court has the bounden constitutional duty to strike down grave abuse of discretion *whenever* and *wherever* it is committed. Thus, notwithstanding the interlocutory character and effect of the denial of the demurrers to evidence, the petitioners as the accused could avail themselves of the remedy of *certiorari* when the denial was tainted with grave abuse of discretion. As we shall soon show, the *Sandiganbayan* as the trial court was guilty of grave abuse of discretion when it capriciously denied the demurrers to evidence despite the absence of competent and sufficient evidence to sustain the indictment for plunder, and despite the absence of the factual bases to expect a guilty verdict.[3]

We reiterate the foregoing resolution, and stress that the prohibition contained in Section 23, Rule 119 of the *Rules of Court* is not an insuperable obstacle to the review by the Court of the denial of the demurrer to evidence through *certiorari*. We have had many rulings to that effect in the past. For instance, in *Nicolas v. Sandiganbayan*,[4] the Court expressly ruled that the petition for *certiorari* was the proper remedy to assail the denial of the demurrer to evidence that was tainted with grave abuse of discretion or excess of jurisdiction, or oppressive exercise of judicial authority.

Secondly, the State submits that its right to due process was violated because the decision imposed additional elements for plunder that neither Republic Act No. 7080 nor jurisprudence had theretofore required, *i.e.*, the identification of the main plunderer, and personal benefit on the part of the accused committing the predicate crime of raid on the public treasury. The State complains that it was not given the opportunity to establish such additional elements; that the imposition of new elements further amounted to judicial legislation in violation of the doctrine of separation of powers; that the Court nitpicked

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[3] *Rollo* (G.R. No. 220953), Vol. III, pp. 1846-1847; bold underscoring is supplied for emphasis.

[4] G.R. Nos. 175930-31, February 11, 2008, 544 SCRA 324, 336.

on the different infirmities of the information despite the issue revolving only around the sufficiency of the evidence; and that it established all the elements of plunder beyond reasonable doubt.

The State cites the plain meaning rule to highlight that the crime of plunder did not require personal benefit on the part of the raider of the public treasury. It insists that the definition of *raids on the public treasury*, conformably with the plain meaning rule, is the taking of public money through fraudulent or unlawful means, and such definition does not require enjoyment or personal benefit on the part of plunderer or on the part of any of his co-conspirators for them to be convicted for plunder.

The submissions of the State are unfounded.

The requirements for the identification of the main plunderer and for personal benefit in the predicate act of *raids on the public treasury* have been written in R.A. No. 7080 itself as well as embedded in pertinent jurisprudence. This we made clear in the decision, as follows:

> A perusal of the information suggests that what the Prosecution sought to show was an implied conspiracy to commit plunder among all of the accused on the basis of their collective actions prior to, during and after the implied agreement. It is notable that the Prosecution did not allege that the conspiracy among all of the accused was by express agreement, or was a wheel conspiracy or a chain conspiracy.
>
> This was another fatal flaw of the Prosecution.

In its present version, under which the petitioners were charged, Section 2 of Republic Act No. 7080 (Plunder Law) states:

> Section 2. *Definition of the Crime of Plunder; Penalties.* - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty million pesos (₱50,000,000.00) shall be guilty of the crime of plunder and shall be punished by *reclusion perpetua* to death.

Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State. [As Amended by Section 12, Republic Act No. 7659 (The Death Penalty Law)]

Section 1(d) of Republic Act No. 7080 provides:

Section 1. *Definition of terms.* - As used in this Act, the term:

x x x x x x x x x

d. "*Ill-gotten wealth"* means any asset, property, business enterprise or material possession of any person within the purview of Section two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

1. Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;

2. By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;

3. By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations and their subsidiaries;

4. By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;

5. By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of

decrees and orders intended to benefit particular persons or special interests; or

6. By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

The law on plunder requires that a particular public officer must be identified as the one who amassed, acquired or accumulated ill-gotten wealth because it plainly states that plunder is committed by any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth in the aggregate amount or total value of at least ₱50,000,000.00 through a *combination* or *series* of overt criminal acts as described in Section 1(d) hereof. Surely, the law requires in the criminal charge for plunder against several individuals that there must be a main plunderer and her co-conspirators, who may be members of her family, relatives by affinity or consanguinity, business associates, subordinates or other persons. In other words, the allegation of the wheel conspiracy or express conspiracy in the information was appropriate because the main plunderer would then be identified in either manner. Of course, implied conspiracy could also identify the main plunderer, but that fact must be properly alleged and duly proven by the Prosecution.

This interpretation is supported by *Estrada v. Sandiganbayan*, where the Court explained the nature of the conspiracy charge and the necessity for the main plunderer for whose benefit the amassment, accumulation and acquisition was made, thus:

> There is no denying the fact that the "plunder of an entire nation resulting in material damage to the national economy" is made up of a complex and manifold network of crimes. In the crime of plunder, therefore, different parties may be united by a common purpose. In the case at bar, the different accused and their different criminal acts have a commonality - to help the former President amass, accumulate or acquire ill-gotten wealth. Sub-paragraphs (a) to (d) in the Amended Information alleged the different participation of each accused in the conspiracy. **The gravamen of the conspiracy charge, therefore,**

> is not that each accused agreed to receive protection money from illegal gambling, that each misappropriated a portion of the tobacco excise tax, that each accused ordered the GSIS and SSS to purchase shares of Belle Corporation and receive commissions from such sale, nor that each unjustly enriched himself from commissions, gifts and kickbacks; rather, it **is that each of them, by their individual acts, agreed to participate, directly or indirectly, in the amassing, accumulation and acquisition of ill-gotten wealth of and/or for former President Estrada**.[5] [bold underscoring supplied for emphasis]

Indeed, because plunder is a crime that only a public official can commit by amassing, accumulating, or acquiring ill-gotten wealth in the aggregate amount or total value of at least ₱50,000,000.00, the identification in the information of such public official as the main plunderer among the several individuals thus charged is logically necessary under the law itself. In particular reference to Criminal Case No. SB-12-CRM-0174, the individuals charged therein – including the petitioners – were 10 public officials; hence, it was only proper to identify the main plunderer or plunderers *among the 10 accused* who herself or himself had amassed, accumulated, or acquired ill-gotten wealth with the total value of at least ₱50,000,000.00.

The phrase *raids on the public treasury* as used in Section 1(d) of R. A. No. 7080 is itself ambiguous. In order to ascertain the objective meaning of the phrase, the act of raiding the public treasury cannot be divided into parts. This is to differentiate the predicate act of *raids on the public treasury* from other offenses involving property, like robbery, theft, or *estafa*. Considering that R.A. No. 7080 does not expressly define this predicate act, the Court has necessarily resorted to statutory construction. In so doing, the Court did not adopt the State's submission that personal benefit on the part of the accused need not be alleged and shown because doing so would have defeated the clear intent of the law itself,[6] which was to punish the amassing, accumulating, or

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[5] *Rollo* (G.R. No. 220593), Vol. III, pp. 1851-1854.

[6] See *Garcia v. Social Security Commission Legal and Collection*, G.R. No. 170735, December 17, 2007, 540 SCRA 456, 472.

acquiring of ill-gotten wealth in the aggregate amount or total value of at least ₱50,000,000.00 by any combination or series of acts of misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury.

As the decision has observed, the rules of statutory construction as well as the deliberations of Congress indicated the intent of Congress to require personal benefit for the predicate act of *raids on the public treasury*, *viz.*:

> The phrase *raids on the public treasury* is found in Section 1 (d) of R.A. No. 7080, which provides:
>
> Section1. *Definition of Terms.* – x x x
>
> x x x x x x x x x
>
> d) Ill-gotten wealth means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:
>
> 1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
>
> x x x x x x x x x

To discern the proper import of the phrase *raids on the public treasury*, the key is to look at the accompanying words: *misappropriation, conversion, misuse* or *malversation of public funds*. This process is conformable with the maxim of statutory construction *noscitur a sociis*, by which the correct construction of a particular word or phrase that is ambiguous in itself or is equally susceptible of various meanings may be made by considering the company of the words in which the word or phrase is found or with which it is associated. Verily, a word or phrase in a statute is always used in association with other words or phrases, and its meaning may, therefore, be modified or restricted by the latter.

***To convert* connotes the act of using or disposing of another's property as if it were one's own; *to misappropriate* means to own, to take something for one's own benefit; *misuse* means "a good,**

substance, privilege, or right used improperly, unforeseeably, or not as intended;" and *malversation* occurs when "any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially." The common thread that binds all the four terms together is that the public officer *used* the property taken. Considering that *raids on the public treasury* is in the company of the four other terms that require the use of the property taken, the phrase *raids on the public treasury* similarly requires such use of the property taken. Accordingly, the *Sandiganbayan* gravely erred in contending that the mere accumulation and gathering constituted the forbidden act of *raids on the public treasury*. Pursuant to the maxim of *noscitur a sociis*, *raids on the public treasury* requires the raider to use the property taken impliedly for his personal benefit.[7]

The Prosecution asserts that the Senate deliberations removed *personal benefit* as a requirement for plunder. In not requiring personal benefit, the *Sandiganbayan* quoted the following exchanges between Senator Enrile and Senator Tañada, *viz.*:

> Senator Enrile. The word here, Mr. President, "such public officer or person who conspired **or knowingly benefited**". **One does not have to conspire or rescheme**. The only element needed is that he "knowingly benefited". A candidate for the Senate for instance, who received a political contribution from a plunderer, knowing that the contributor is a plunderer and therefore, he knowingly benefited from the plunder, would he also suffer the penalty, Mr. President, for life imprisonment?
>
> Senator Tañada. In the committee amendments, Mr. President, we have deleted these lines 1 to 4 and part of line 5, on page 3. But, in a way, Mr. President, it is good that the Gentleman is bringing out these questions, I believe that under the examples he has given, the Court will have to…
>
> Senator Enrile. How about the wife, Mr. President, he may not agree with the plunderer to plunder the country but because she is a dutiful wife or a faithful husband, she has to keep her

[7] Bold underscoring is added for emphasis.

> or his vow of fidelity to the spouse. And, of course, she enjoys the benefits out of the plunder. Would the Gentleman now impute to her or him the crime of plunder simply because she or he knowingly benefited out of the fruits of the plunder and, therefore, he must suffer or he must suffer the penalty of life imprisonment?
>
> The President. That was stricken out already in the Committee amendment.
>
> Senator Tañada. Yes, Mr. President. Lines 1 to 4 and part of line 5 were stricken out in the Committee amendment. But, as I said, the examples of the Minority Floor Leader are still worth spreading the *Record*. And, I believe that in those examples, the Court will have just to take into consideration all the other circumstances prevailing in the case and the evidence that will be submitted.
>
> The President. In any event, 'knowingly benefited' has already been stricken off."

The exchanges between Senator Enrile and Senator Tañada reveal, therefore, that what was removed from the coverage of the bill and the final version that eventually became the law was a person who was not the main plunderer or a co-conspirator, but one who personally benefited from the plunderers' action. The requirement of personal benefit on the part of the main plunderer or his co-conspirators by virtue of their plunder was not removed.

As a result, not only did the Prosecution fail to show where the money went but, more importantly, that GMA and Aguas had personally benefited from the same. Hence, the Prosecution did not prove the predicate act of *raids on the public treasury* beyond reasonable doubt.[8]

Thirdly, the State contends that the Court did not appreciate the totality of its evidence, particularly the different irregularities committed in the disbursement of the PCSO funds, *i.e.*, the commingling of funds, the non-compliance with LOI No. 1282, and the unilateral approval of the disbursements. Such totality, coupled with the fact of the petitioners' indispensable cooperation in the pilfering of public funds, showed the existence of the conspiracy to commit plunder among all of the accused.

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[8] *Rollo* (G.R. No. 220953), Vol. III, pp. 1863-1865.

The contention lacks basis.

As can be readily seen from the decision, the Court expressly granted the petitioners' respective demurrers to evidence and dismissed the plunder case against them for insufficiency of evidence because:

> x x x the *Sandiganbayan* as the trial court was guilty of grave abuse of discretion when it capriciously denied the demurrers to evidence **despite the absence of competent and sufficient evidence to sustain the indictment for plunder, and despite the absence of the factual bases to expect a guilty verdict**.[9]

Such disposition of the Court fully took into consideration *all* the evidence adduced against the petitioners. We need not rehash our review of the evidence thus adduced, for it is enough simply to stress that the Prosecution failed to establish the *corpus delicti* of plunder – that any or all of the accused public officials, particularly petitioner Arroyo, had amassed, accumulated, or acquired ill-gotten wealth in the aggregate amount or total value of at least ₱50,000,000.00.

Fourthly, in accenting certain inadequacies of the allegations of the information, the Court did not engage in purposeless nitpicking, and did not digress from the primary task of determining the sufficiency of the evidence presented by the State against the petitioners. What the Court thereby intended to achieve was to highlight what would have been relevant in the *proper* prosecution of plunder and thus enable itself to discern and determine whether the evidence of guilt was sufficient or not. In fact, the Court categorically clarified that in discussing the essential need for the identification of the main plunderer it was not harping on the sufficiency of the information, but was only enabling itself to search for and to find the relevant proof that unequivocally showed petitioner Arroyo as the "mastermind" – which was how the Sandiganbayan had characterized her participation – in the context of the implied conspiracy alleged in the information. But the search came to

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[9] *Id*. at 1847.

naught, for the information contained nothing that averred her commission of the *overt act* necessary to implicate her in the supposed conspiracy to commit the crime of plunder. Indeed, the Court assiduously searched for but did not find the sufficient incriminatory evidence against the petitioners. Hence, the Sandiganbayan capriciously and oppressively denied their demurrers to evidence.

Fifthly, the State posits that it established at least a case for malversation against the petitioners.

Malversation is defined and punished under Article 217 of the *Revised Penal Code*, which reads thusly:

> Article 217. *Malversation of public funds or property; Presumption of malversation.* — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:
>
> 1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos.
>
> 2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than two hundred pesos but does not exceed six thousand pesos.
>
> 3. The penalty of *prision mayor* in its maximum period to reclusion temporal in its minimum period, if the amount involved is more than six thousand pesos but is less than twelve thousand pesos.
>
> 4. The penalty of *reclusion temporal*, in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua*.
>
> In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the

amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal use. (As amended by RA 1060).

The elements of malversation are that: (a) the offender is an accountable public officer; (b) he/she is responsible for the misappropriation of public funds or property through intent or negligence; and (c) he/she has custody of and received such funds and property by reason of his/her office.[10]

The information in Criminal Case No. SB-12-CRM-0174[11] avers:

The undersigned Assistant Ombudsman and Graft Investigation and Prosecution Officer III, Office of the Ombudsman, hereby accuse GLORIA MACAPAGAL-ARROYO, ROSARIO C. URIARTE, SERGIO O. VALENCIA, MANUEL L. MORATO, JOSE R. TARUC V, RAYMUNDO T. ROQUERO, MA. FATIMA A.S. VALDES, BENIGNO B. AGUAS, REYNALDO A. VILLAR and NILDA B. PLARAS, of the crime of **PLUNDER**, as defined by, and penalized under Section 2 of Republic Act (R.A.) No. 7080, as amended by R.A. No. 7659, committed, as follows:

That during the period from January 2008 to June 2010 or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, accused GLORIA MACAPAGAL-ARROYO, then the President of the Philippines, ROSARIO C. URIARTE, then General Manager and Vice Chairman, SERGIO O. VALENCIA, then Chairman of the Board of Directors, MANUEL L. MORATO, JOSE R. TARUC V, RAYMUNDO T. ROQUERO, MA. FATIMA A.S. VALDES, then members of the Board of Directors, BENIGNO B. AGUAS, then Budget and Accounts Manager, all of the Philippine Charity Sweepstakes Office (PCSO), REYNALDO A. VILLAR, then Chairman, and NILDA B. PLARAS,

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[10] Regalado, *Criminal Law Conspectus*, 1st Edition, 2000, National Book Store, Inc., p. 424.

[11] *Rollo* (G.R. No. 220598), Vol. I, pp. 305-307-A.

then Head of Intelligence/Confidential Fund Fraud Audit Unit, both of the Commission on Audit, all public officers committing the offense in relation to their respective offices and taking undue advantage of their respective official positions, authority, relationships, connections or influence, conniving, conspiring and confederating with one another, did then and there willfully, unlawfully and criminally amass, accumulate and/or acquire directly or indirectly, ill-gotten wealth in the aggregate amount or total value of THREE HUNDRED SIXTY FIVE MILLION NINE HUNDRED NINETY SEVEN THOUSAND NINE HUNDRED FIFTEEN PESOS (PHP365,997,915.00), more or less, through any or a combination or a series of overt or criminal acts, or similar schemes or means, described as follows:

(a) diverting in several instances, funds from the operating budget of PCSO to its Confidential/Intelligence Fund that could be accessed and withdrawn at any time with minimal restrictions, and converting, misusing, and/or illegally conveying or transferring the proceeds drawn from said fund in the aforementioned sum, also in several instances, to themselves, in the guise of fictitious expenditures, for their personal gain and benefit;

(b) raiding the public treasury by withdrawing and receiving, in several instances, the above-mentioned amount from the Confidential/Intelligence Fund from PCSO's accounts, and or unlawfully transferring or conveying the same into their possession and control through irregularly issued disbursement vouchers and fictitious expenditures; and

(c) taking advantage of their respective official positions, authority, relationships, connections or influence, in several instances, to unjustly enrich themselves in the aforementioned sum, at the expense of, and the damage and prejudice of the Filipino people and the Republic of the Philippines.

CONTRARY TO LAW.

In thereby averring the *predicate act* of malversation, the State did not sufficiently allege the aforementioned essential elements of malversation in the information. The omission from the information of factual details descriptive of the aforementioned elements of malversation highlighted the

insufficiency of the allegations. Consequently, the State's position is entirely unfounded.

Lastly, the petitioners insist that the consideration and granting of the motion for reconsideration of the State can amount to a violation of the constitutional prohibition against double jeopardy because their acquittal under the decision was a prior jeopardy within the context of Section 21, Article III (*Bill of Rights*) of the 1987 Constitution, to wit:

> Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

The insistence of the petitioners is fully warranted. Indeed, the consideration and granting of the motion for reconsideration of the State will amount to the violation of the constitutional guarantee against double jeopardy.

The Court's consequential dismissal of Criminal Case No. SB-12-CRM-0174 as to the petitioners *for insufficiency of evidence* amounted to their *acquittal* of the crime of plunder charged against them. In *People v. Tan*,[12] the Court shows why:

> In *People v. Sandiganbayan*, this Court explained the general rule that the grant of a demurrer to evidence operates as an acquittal and is, thus, final and unappealable, to wit:
>
> **The demurrer to evidence in criminal cases, such as the one at bar, is "*filed after the prosecution had rested its case*," and when the same is granted, it calls "for an appreciation of the evidence adduced by the prosecution and its sufficiency to warrant conviction beyond reasonable doubt, resulting in a *dismissal of the case on the merits*, *tantamount to an acquittal of the accused*." Such dismissal of a criminal case by the grant of demurrer to evidence may not be appealed, for to do so would be to place the accused in double jeopardy. The verdict being one of acquittal, the case ends there**.
>
> x x x x x x x x x

[12] G.R. No. 167526, July 26, 2010, 625 SCRA 388.

The rule on double jeopardy, however, is not without exceptions. In *People v. Laguio, Jr.*, this Court stated that the only instance when double jeopardy will not attach is when the RTC acted with grave abuse of discretion, thus:

> **. . . The only instance when double jeopardy will not attach is when the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction, such as where the prosecution was denied the opportunity to present its case or where the trial was a sham**. However, while *certiorari* may be availed of to correct an erroneous acquittal, the petitioner in such an extraordinary proceeding must clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.[13]

The constitutional prohibition against placing a person under double jeopardy for the same offense bars not only a new and independent prosecution but also an appeal in the same action after jeopardy had attached.[14] As such, every *acquittal* becomes final *immediately upon promulgation* and cannot be recalled for correction or amendment. With the acquittal being immediately final, granting the State's motion for reconsideration in this case would violate the Constitutional prohibition against double jeopardy because it would effectively reopen the prosecution and subject the petitioners to a second jeopardy *despite their acquittal*.

It is cogent to remind in this regard that the Constitutional prohibition against double jeopardy provides to the accused three related protections, specifically: *protection against a second prosecution for the same offense after acquittal*; *protection against a second prosecution for the same offense after conviction*; and *protection against multiple punishments for the same offense*.[15] The rationale for the three protections is expounded in *United States v. Wilson*:[16]

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[13] *Id*. at 395-397 (bold underscoring supplied for emphasis).

[14] *Republic v. Court of Appeals*, No. L-41115, September 11, 1982, 116 SCRA 505, 556; *People v. Pomeroy*, 97 Phil. 927 (1955); *People v. Bringas*, 70 Phil. 528; *People v. Yelo*, 83 Phil. 618.

[15] *North Carolina v. Pearce*, 395 US 711, 717 (1969).

[16] 420 US 332, 343 (1975).

The interests underlying these three protections are quite similar. When a defendant has been once convicted and punished for a particular crime, principles of fairness and finality require that he not be subjected to the possibility of further punishment by being again tried or sentenced for the same offense. *Ex parte Lange*, 18 Wall 163 (1874); *In re Nielsen*, 131 U.S. 176 (1889). **When a defendant has been acquitted of an offense, the Clause guarantees that the State shall not be permitted to make repeated attempts to convict him,**

> **"thereby subjecting him to embarrassment, expense and ordeal, and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that, even though innocent, he may be found guilty."**

Green v. United States, 355 U.S. 184, 187-188 (1957).

The policy of avoiding multiple trials has been regarded as so important that exceptions to the principle have been only grudgingly allowed. Initially, a new trial was thought to be unavailable after appeal, whether requested by the prosecution or the defendant. See *United States v. Gibert*, 25 F. Cas. 1287 (No. 15,204) (CCD Mass. 1834) (Story, J.). **It was not until 1896 that it was made clear that a defendant could seek a new trial after conviction, even though the Government enjoyed no similar right.** *United States v. Ball*, 163 U.S. 662. (Bold underscoring supplied for emphasis)

WHEREFORE, the Court **DENIES** the motion for reconsideration for lack of merit.

SO ORDERED.

Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Mendoza, Reyes, Jardeleza, Martires, and *Tijam, JJ.,* concur.

Perlas-Bernabe, J., see concurring and dissenting opinion in the main case.

Sereno, C.J., Carpio, and *Caguioa, JJ.,* join the dissent of *J.* Leonen.

Leonen, J., dissents, see dissenting opinion.

DISSENTING OPINION

LEONEN, *J.*:

I maintain my dissent.

This Court's July 19, 2016 Decision[1] sets a dangerous precedent. It effectively requires new elements to the crime of plunder that are not sustained by the text of the Anti-Plunder Law. In doing so, this Court sets itself upon the course of encroaching on Congress' plenary power to make laws. It also denies the State the opportunity to adequately present its case. Likewise, it unwittingly licenses the most cunning plunderers to prey upon public funds with impunity.

This is *not* what the Anti-Plunder Law intends.

I

Republic Act No. 7080 or the Anti-Plunder Law was adopted in the wake of the Marcos dictatorship, when the pilferage of the country's wealth by former President Ferdinand E. Marcos, his wife Imelda, their family and cronies bled the Philippine economy dry.[2] The terms "kleptocracy," "plunder," and "government by thievery" populated political discourse during Marcos' rule.[3]

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[1] *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/220598.pdf> [Per *J.* Bersamin, *En Banc*].

[2] *See* Stolen Assert Recovery Initiative of the World Bank and the United Nations Office on Drugs and Crime, <http://star.worldbank.org/corruption-cases/node/18497> (last visited April 17, 2017); *see also* University of the Philippines Alumni Obituary for Senator Jovito Salonga, *Martial law veteran, Senate President who presided at anti-bases vote, dies,* <http://alum.up.edu.ph/?p=4864> (last visited April 17, 2017), Michael Bueza, *Plunder in the Philippines,* RAPPLER, June 21, 2014, <http://www.RAPPLER.com/newsbreak/60139-plunder-philippines-history> (last visited April 17, 2017), and Nikko Dizon, *Salonga, senator, patriot, statesman; 95,* Inquirer.net <http://newsinfo.inquirer.net/772662/salonga-senator-patriot-statesman-95> (last visited April 17, 2017).

[3] Mortalla, Nelson Nogot, *Graft and Corruption: The Philippine Experience*,<http://www.unafei.or.jp/english/pdf/RS_No56/No56_44PA_Moratalla.pdf> 502 (last visited April 17, 2017).

Their ravaging is confirmed in jurisprudence. *Republic v. Sandiganbayan*[4] professes the Marcos' regime's looting of at least US$650 million (as of January 31, 2002) worth of government funds.

After the 1986 People Power Revolution, former Senate President Jovito Salonga lamented that laws already in force, such as Republic Act No. 3019 – the Anti-Graft and Corrupt Practices Act – "were clearly inadequate to cope with the magnitude of the corruption and thievery committed during the Marcos years."[5] Thus, he filed in the Senate a bill to address large-scale larceny of public resources – the anti-plunder bill. Then Representative Lorna Yap filed a counterpart bill in the House of Representatives.[6]

The Explanatory Note to Senate Bill No. 733 stated:

The acts and/or omissions sought to be penalized. . . constitute plunder of an entire nation resulting in material damage to the national economy[, which] does not yet exist in Philippine statute books. Thus, the need to come up with a legislation as a safeguard against the possible recurrence of the depravities of the previous regime and as a deterrent to those with similar inclination to succumb to the corrupting influence of power.[7] (Emphasis supplied)

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[4] 461 Phil. 598 (2003) [Per *J*. Corona, *En Banc*].

[5] Michael Bueza, *Plunder in the Philippines,* RAPPLER, June 21, 2014, <http://www.RAPPLER.com/newsbreak/60139-plunder-philippines-history> (last visited April 17, 2017).

[6] Michael Bueza, *Plunder in the Philippines,* RAPPLER, June 21, 2014,<http://www.rappler.com/newsbreak/60139-plunder-philippines-history> (last visited April 17, 2017).

[7] *Estrada v. Sandiganbayan*, 427 Phil. 820, 851-852 (2002) [Per *J*. Puno, *En Banc*].

Senate Bill No. 733 and House Bill No. 22752 were consolidated into Republic Act No. 7080,[8] which President Corazon Aquino signed on July 12, 1991.[9]

II

Republic Act No. 7080, as amended by Republic Act No. 7659, defines plunder as follows:

> Section 2. Definition of the Crime of Plunder; Penalties. — Any *public officer* who, *by himself or in connivance* with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or *acquires ill-gotten wealth* through a *combination or series of overt or criminal acts* as described in Section 1(d) hereof, in the aggregate amount or total value *of at least Fifty million pesos* (₱50,000,000.00), shall be guilty of the crime of plunder and shall be punished by life imprisonment with perpetual absolute disqualification from holding any public office. Any person who participated with said public officer in the commission of plunder shall likewise be punished. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stock derived from the deposit or investment thereof forfeited in favor of the State. (Emphasis supplied)

This statutory definition may be divided into three (3) main parts.

The first part identifies the persons who may be liable for plunder and the central acts around which plunder revolves. It penalizes "[a]ny public officer who, by himself or *in connivance with* members of his family, relatives. . . or other persons, amasses, accumulates or acquires ill-gotten wealth[.]"

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[8] *See* Michael Bueza, *Plunder in the Philippines,* RAPPLER, June 21, 2014, <http://www.rappler.com/newsbreak/60139-plunder-philippines-history> (last visited April 17, 2017).

[9] Republic Act No. 7080 (1991), An Act Defining and Penalizing the Crime of Plunder.

The law only requires a showing that a person holds public office. He or she may act alone or in conspiracy with others. Thus, the Anti-Plunder Law explicitly recognizes that plunder may be committed collectively—"in connivance with" others. In doing so, it makes no distinction between the conspirators. Glaringly absent is any mention of a so-called "main plunderer" or specific "personal benefit" gained by any confederate to the crime.

It is also silent on the manner by which conspirators organized themselves, or otherwise went about committing the offense. Thus, there is no need to show that plunder is centralized. All that Section 2 requires is proof that the accused acted out of a common design to amass, accumulate, or acquire ill-gotten wealth.

The second part specifies the means through which plunder is committed, that is, "through a *combination* or *series* of overt or criminal acts as described in Section 1(d) of Republic Act No. 7080."

"Combination," as used in Section 2 of the Anti-Plunder Law, was explained in *Estrada vs. Sandiganbayan*[10] to refer to "at least any two different predicate acts in any of said items" in Section 1(d).[11] "Series" was explained as synonymous to "on several instances"[12] or a "repetition of the same predicate act in any of the items in Section 1(d) of the law."[13]

The "overt or criminal acts described in Section 1(d)" are the following:

a. Misappropriating, converting, misusing, or malversing public funds; or *raiding on the public treasury*;

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[10] 427 Phil. 820 (2002) [Per *J.* Puno, *En Banc*].

[11] *Id.* at 846.

[12] *Id.*

[13] *Id.*

b. Receiving any commission or kickbacks from a government contract or project, or by reason of one's office or position;

c. Fraudulently disposing government assets;

d. Obtaining any interest or participating in any business undertaking;

e. Establishing monopolies or implementing decrees that benefit particular persons or interests; and

f. Taking undue advantage of one's official position or influence to enrich oneself at the expense of the People and the Republic.

Like Section 2, Section 1(d) does not speak of any "main plunderer" or any "personal benefit" obtained. In defining "ill-gotten wealth," it merely speaks of acquisitions made through a "combination or series" of any, some, or all of the six (6) identified schemes. Thus, for example, two (2) instances of raiding on the public treasury suffice to sustain a finding of plunder.

As I noted in my dissent to the majority's July 19, 2016 Decision:[14]

> Section 2 does not require plunder to be centralized, whether in terms of its planning and execution, or in terms of its benefits. All it requires is for the offenders to act out of a common design to amass, accumulate, or acquire ill-gotten wealth, such that the aggregate amount obtained is at least ₱50,000,000.00.[15]

The third part specifies the threshold amount for plunder. It must be "in the aggregate amount or total value of at least Fifty million pesos (₱50,000,000.00)[.]" The law speaks of an "aggregate amount." It also uses the term, "total value," to

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[14] Dissenting Opinion of *J.* Leonen in *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016, <http://sc.judiciary.gov.ph/jurisprudence/2016/july2016/220598_leonen.pdf> [Per *J.* Bersamin, *En Banc*].

[15] *Id.* at 8.

highlight how the amount must be counted in its whole, and not severed into parts. How this Court has replaced the statutory requirement of "aggregate amount" or "total value" to mere "aliquot" shares[16] is bewildering.

It is not for this Court to repeal or modify statutes in the guise of merely construing them. Our power to interpret law does not encompass the power to add to or cancel the statutorily prescribed elements of offenses.

III

The most recent jurisprudence on plunder prior to this case is *Enrile v. People*.[17] Promulgated on August 15, 2015, *Enrile* specifies the elements of plunder under Republic Act No. 7080, as follows:

> [T]he elements of plunder are:
>
> (1) That the offender is a ***public officer*** who acts ***by himself or in connivance*** with members of his family, relatives by affinity or consanguinity, business associates, subordinates, or other persons;
>
> (2) That he amassed, accumulated or ***acquired ill-gotten wealth through a combination or series of the following overt or criminal acts***:
>
> a. through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
> b. by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer;

[16] *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/220598.pdf> 35 [Per *J.* Bersamin, *En Banc*].

[17] *Enrile v. People*, G.R. No. 213455, August 11, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/august2015/213455.pdf> [Per *J.* Brion, *En Banc*].

c. by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of Government-owned or -controlled corporations or their subsidiaries;
d. by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;
e. by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or
f. by taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines; and,

(3) That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least ₱50,000,000.00.[18] (Emphasis in the original)

Enrile is faithful to the text of the Anti-Plunder Law. It makes no reference to a "main plunderer" or to "personal benefit." The prosecution and the Sandiganbayan were correct to rely on this recital of elements in the course of the proceedings that culminated in the Sandiganbayan's assailed September 10, 2015 Resolution.

The Office of the Ombudsman laments that this Court has effectively increased the elements required for conviction.[19] Coming at the heels of our definitive pronouncements in *Enrile*, the prosecution was caught by surprise.[20]

The majority's July 19, 2016 Decision states:

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[18] *Id*. at 21.

[19] *Rollo,* pp. 4162–4171, Motion for Reconsideration.

[20] The prosecution refers to the insertion of new elements as a "retroactive imposition" that "border[s] on judical legislation [and] is bereft of basis within the context of R[epublic] A[ct] No. 7080." (See Motion for Reconsideration, p. 15)

The law on plunder requires that a particular public officer must be identified as the one who amassed, acquired or accumulated ill-gotten wealth because it plainly states that plunder is committed by any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth in the aggregate amount or total value of at least ₱50,000,000.00 through a combination or series of overt criminal acts as described in Section 1(d) hereof. *Surely, the law requires in the criminal charge for plunder against several individuals that there must be a main plunderer and her co-conspirators, who may be members of her family, relatives by affinity or consanguinity, business associates, subordinates or other persons*. In other words, the allegation of the wheel conspiracy or express conspiracy in the information was appropriate because the main plunderer would then be identified in either manner . . .[21] (Emphasis and underscoring supplied)

The July 19, 2016 Decision proceeds to cite the 2002 Decision in *Estrada v. Sandiganbayan*[22] (2002 *Estrada* case) in support of the supposed need for a specification of a "main plunderer" and of "personal benefit":

This interpretation is supported by *[Jose "Jinggoy"] Estrada v. Sandiganbayan*, where the Court explained the nature of the conspiracy charge and the necessity for the main plunderer for whose benefit the amassment, accumulation and acquisition was made, thus:

> There is no denying the fact that the "plunder of an entire nation resulting in material damage to the national economy" is made up of a complex and manifold network of crimes. In the crime of plunder, therefore, different parties may be united by a common purpose. In the case at bar, the different accused and their different criminal acts have a commonality — to help the former President amass, accumulate or acquire ill-gotten

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[21] *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/220598.pdf> 34 [Per *J*. Bersamin, *En Banc*].

[22] *Estrada v. Sandiganbayan,* 427 Phil. 820 (2002) [Per *J*. Puno, *En Banc*].

> wealth. Sub-paragraphs (a) to (d) in the Amended Information alleged the different participation of each accused in the conspiracy. **The gravamen of the conspiracy charge, therefore,** is not that each accused agreed to receive protection money from illegal gambling, that each misappropriated a portion of the tobacco excise tax, that each accused ordered the GSIS and SSS to purchase shares of Belle Corporation and receive commissions from such sale, nor that each unjustly enriched himself from commissions, gifts and kickbacks; rather, it **is that each of them, by their individual acts, agreed to participate, directly or indirectly, in the amassing, accumulation and acquisition of ill-gotten wealth of and/or for former President Estrada.**[23] (Emphasis and underscoring in the original)

The majority's sweeping reliance[24] on the 2002 *Estrada* case is misplaced. It fails to account for nuances that engendered the pronouncements made in *Estrada*.

The 2002 *Estrada*[25] case referred to one (1) of five (5) cases filed against former President Joseph Ejercito Estrada, his family, and associates. It explicitly acknowledged that the five (5) criminal complaints were "an offshoot of the impeachment proceedings against [former President] Estrada."[26]

More specifically, the 2002 *Estrada* case involved a separate charge of plunder against President Estrada's son, Jose "Jinggoy" Estrada. Thus, it became necessary to state in the information that Jinggoy Estrada engaged in a conspiracy with his father.[27] That case needed to specifically establish the conspiracy linkage between former President Estrada and Jinggoy Estrada:

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[23] *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/220598.pdf>34-35[Per *J*. Bersamin, *En Banc*].

[24] See *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/220598.pdf> 31-35 [Per *J*. Bersamin, *En Banc*].

[25] *Estrada v. Sandiganbayan,* 427 Phil. 820 (2002) [Per *J*. Puno, *En Banc*].

[26] *Id*. at 839.

[27] *Id*. at 848-853.

From a reading of the Amended Information, the case at bar appears similar to a "wheel" conspiracy. The hub is former President Estrada while the spokes are all the accused [Jose "Jinggoy" Estrada, et al.], and the rim that encloses the spokes is the common goal in the overall conspiracy, i.e., the amassing, accumulation and acquisition of ill-gotten wealth.[28]

Notwithstanding these nuances in the 2002 *Estrada* case, it remains that, in a conspiracy:

> [T]he act of one is the act of all the conspirators, and a conspirator may be held as a principal even if he did not participate in the actual commission of every act constituting the offense. In conspiracy, all those who in one way or another helped and cooperated in the consummation of the crime are considered co-principals since the degree or character of the individual participation of each conspirator in the commission of the crime becomes immaterial.[29]

There is no need to identify a "main conspirator" and a "co-conspirator." For the accused to be found liable as a co-principal, prosecution must only show:

> [A]n overt act in furtherance of the conspiracy, either by actively participating in the actual commission of the crime, or by lending moral assistance to his co-conspirators by being present at the scene of the crime, or by exerting moral ascendancy over the rest of the conspirators as to move them to executing the conspiracy.[30]

Unlike in the 2002 *Estrada* case, all of the accused here are charged in the same information; not in five (5) separate informations that were explicit "offshoots of the impeachment proceedings against former President Estrada."[31]

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[28] *Id*. at 853.

[29] *People v. Medina*, 354 Phil. 447, 460 (1998) [Per *J*. Regalado, *En Banc*], citing *People v. Paredes*, 133 Phil. 633, 660 (1968) [Per *J*. Angeles, *En Banc*]; *Valdez v. People*, 255 Phil. 156, 160-161 (1986) [Per *J*. Cortes, *En Banc*]; *People v. De la Cruz*, 262 Phil. 838, 856 (1990) [Per *J*. Melencio-Herrera, Second Division]; *People v. Camaddo*, 291 Phil. 154, 160-161 (1993) [Per *J*. Bidin, Third Division].

[30] *People v. Peralta*, 134 Phil. 703, 723 (1968) [*Per Curiam*, *En Banc*].

[31] *Estrada v. Sandiganbayan*, 427 Phil. 820, 839 (2002) [Per *J*. Puno, *En Banc*].

The present case is more akin to that involved in the 2015 *Enrile* Decision. There, the accused public officer, Senator Juan Ponce Enrile, along with his Chief of Staff, Jessica Lucila G. Reyes, as well as Janet Lim Napoles, Ronald John Lim, and John Raymund de Asis were charged in the same information with conspiring to commit plunder. *Enrile* never required the identification of a "main plunderer" or the showing of any "personal benefit" obtained. It is the more appropriate benchmark for this case.

IV

The July 19, 2016 Decision's requirement of a specification of a "main plunderer" and of "personal benefit," which was imposed only after the prosecution presented its case before the Sandiganbayan, makes it necessary for the prosecution to, at least, be given an opportunity to address this novel requirement. Otherwise, the prosecution shall have been deprived of due process to adequately ventilate its case. Thus, a favorable action on the prosecution's Motion for Reconsideration is not a violation of petitioners' right against double jeopardy.

Section 7 of Rule 117 of the Revised Rules on Criminal Procedure[32] identifies three (3) elements of double jeopardy: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and, (3) a second jeopardy must be for the same offense as that in the first.

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[32] RULES OF COURT, Rule 117, Sec. 7 provides:

Section 7. Former conviction or acquittal or former jeopardy. - When a defendant shall have been convicted or acquitted, or the case against him dismissed or otherwise terminated without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, and after the defendant had pleaded to the charge, the conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

Legal jeopardy attaches only (a) upon a valid indictment, (b) before a competent court, (c) after arraignment, (d) when a valid plea has been entered, and (e) when the case was dismissed or otherwise terminated without the express consent of the accused.[33]

Gorion v. Regional Trial Court of Cebu[34] has held that the right against double jeopardy is not violated when the first case was dismissed in violation of the prosecution's right to due process. Any such acquittal is "no acquittal at all, and thus can not constitute a proper basis for a claim of former jeopardy":[35]

> [The dismissal] unquestionably deprived the State of a fair opportunity to present and prove its case. Thus, its right to due process was violated. The said order is null and void and hence, cannot be pleaded by the petitioner to bar the subsequent annulment of the dismissal order or a re-opening of the case on the ground of double jeopardy. This is the rule obtaining in this jurisdiction.[36]

Due process requires that both parties have a real and fair opportunity to be heard. "The State, like the accused[,] is also entitled to due process in criminal cases."[37] In *Dimatulac v. Villon*:[38]

> Indeed, for justice to prevail, the scales must balance; justice is not to be dispensed for the accused alone. The interests of society and the offended parties [including the State] which have been wronged must be equally considered. Verily, a verdict of conviction is not necessarily a denial of justice; and an acquittal is not necessarily a triumph of justice; for, to the society offended and the party wronged, it could also mean injustice. Justice then must be rendered even-

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[33] *People v. Declaro,* 252 Phil. 139, 143 (1989) [Per *J*. Cancayco, First Division].

[34] *Gorion v. RTC of Cebu*, 287 Phil. 1078 (1992) [Per *J*. Davide Jr., Third Division].

[35] *Id.* at 1085.

[36] *Id.*

[37] *People v. Judge Tac-an*, 446 Phil. 496, 505 (2003) [Per *J*. Callejo, Second Division].

[38] *Dimatulac v. Villon*, 358 Phil. 328 (1998) [Per *J*. Davide Jr., First Division].

handedly to both the accused, on one hand, and the State and offended party, on the other.[39] (Citation omitted)

The state must be afforded the right to prosecute, present, and prove its case. Just as importantly, the prosecution must be able to fully rely on expressed legal provisions, as well as on settled and standing jurisprudential principles. It should not be caught in a bind by a sudden and retroactive imposition of additional requirements for successful prosecution.

In *Serino v. Zosa*,[40] the judge announced that he would first hear the civil aspect of the case before the criminal aspect of the case. The public and private prosecutors then stepped out of the courtroom. After trial in the civil case was finished, the criminal case was called. By then, the prosecutors were unavailable. The judge dismissed the case for failure to prosecute. This Court held that double jeopardy did not attach as the order of dismissal was void for having been issued without due process.

In *People v. Navarro*,[41] a Joint Decision was issued acquitting the accused of light threats and frustrated theft. However, there was no actual joint trial in these two (2) criminal cases and no hearing in the light threats case. This Court nullified the judgment of acquittal for light threats.

In *People v. Gomez,*[42] the trial court issued a notice of hearing only to the assistant city prosecutor, not to the special prosecutor actively handling the case. The assistant city prosecutor arrived for trial, but the special prosecutor did not, as he did not know of the hearing. The records, however, were with the special prosecutor. Not ready to appear, the assistant city prosecutor moved to postpone the hearing. The trial court denied the motion and proceeded to dismiss the case due to alleged delays. This Court overruled the dismissal for depriving the State of a fair opportunity to prosecute and convict.

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[39] *Id*. at 365.

[40] 148-B Phil. 497 (1971) [Per *J*. Makalintal, *En Banc*].

[41] 159 Phil. 863 (1975) [Per *J*. Fernandez, Second Division].

[42] 126 Phil. 640 (1967) [Per *J*. Bengzon, *En Banc*].

In *People v. Pablo*,[43] the prosecution's last witness failed to arrive. The prosecution moved to postpone the hearing as that witness' testimony was indispensable. The judge denied the motion. The defense, in turn, filed a motion to consider the prosecution's case rested and to dismiss the case. The judge granted the motion and acquitted all the accused on the same day, "without giving the prosecution a chance to oppose the same, and without reviewing the evidence already presented for a proper assessment as to what crime has been committed by the accused of which they may properly be convicted thereunder[.]"[44]

This Court overturned the acquittal, declaring that courts must be fair to both parties:

> There are several actions which the respondent judge could and should have taken if he had wished to deal with the case considering the gravity of the crime charged, *with fairness to both parties*, as is demanded by his function of dispensing justice and equity. But he utterly failed to take such actions. Thus, *he should have first given warning* that there will definitely be no further postponement after that which he reasonably thought should be the last.[45] (Emphasis supplied)

In these cases, the State was denied vital avenues for the adequate prosecution of offenses, and was not given a fair chance to fully present and prove its case. Thus:

> A purely capricious dismissal of an information, as herein involved, moreover, deprives the State of fair opportunity to prosecute and convict. It denies the prosecution its day in court. Accordingly, it is a dismissal without due process and, therefore, null and void. A dismissal invalid for lack of a fundamental prerequisite, such as due process, will not constitute a proper basis for the claim of double jeopardy.[46]

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[43] 187 Phil. 190 (1980) [Per *J*. De Castro, First Division].

[44] *Id*. at 197-198.

[45] *Id*. at 196.

[46] *People v. Gomez*, 126 Phil. 640, 645 (1967) [Per *J*. Bengzon, *En Banc*].

Here, the import of identifying the "main plunderer" and the "personal benefit" obtained was not emphasized upon the prosecution at the onset. At the minimum, this Court's July 19, 2016 Decision should be considered an admonition, and then applied only prospectively.

Such a consideration would be analogous to the course taken by this Court in *Carpio-Morales v. Court of Appeals*.[47] There, this Court abandoned the condonation doctrine, but expressly made its ruling applicable only to future cases, and not to the case at hand. Respecting the people's reliance on "good law,"[48] we stated:

> 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.* Consequently, *the people's reliance thereupon should be respected.* The landmark case on this matter is *People v. Jabinal*, wherein it was ruled:
>
> > [W]hen a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and *should not apply to parties who had relied on the old doctrine and acted on the faith thereof.*
>
> Later, in *Spouses Benzonan v. CA*, it was further elaborated:
>
> > [P]ursuant to Article 8 of the Civil Code "judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." But while our decisions form part of the law of the land, they are also subject to Article 4 of the Civil Code which provides that "laws shall have no retroactive effect unless the contrary is provided." This is expressed in the familiar legal maxim *lex prospicit, non respicit,* the law looks forward not backward. The rationale against retroactivity is easy to perceive. The retroactive application of a law usually divests

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[47] *Carpio-Morales v. Court of Appeals*, G.R. Nos. 217126-27, November 10, 2015<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/november2015/217126-27.pdf> [Per *J.* Perlas-Bernabe, *En Banc*].

[48] *Carpio-Morales v. Court of Appeals*, G.R. Nos. 217126-27, November 10, 2015 [Per *J.* Perlas-Bernabe, *En Banc*].

rights that have already become vested . . . and hence, is unconstitutional.[49]

V

There is ample evidentiary basis for trial in the Sandiganbayan to proceed.

The prosecution underscores that funds were diverted to the Office of the President.[50] Citing the April 6, 2015[51] Sandiganbayan Resolution, it also emphasizes that petitioner former President Gloria Macapagal-Arroyo's approvals for the letter-requests of petitioner Philippine Charity Sweepstakes Office (PCSO) General Manager Rosario C. Uriarte (Uriarte) for the disbursement of additional Confidential and Intelligence Fund[52] and for the latter's use of these funds[53] are overt acts of plunder within the contemplation of Section 2, in relation to Section 1(d) of the Anti-Plunder Law.[54]

To begin with, Arroyo's appointment of Uriarte to the position of PCSO General Manager already raises serious doubts.[55] According to the prosecution, Uriarte's appointment was made in violation of Republic Act No. 1169,[56] as amended by Batas Pambansa Blg. 42 and Presidential Decree No. 1157. Section 2 of the amended Republic Act No. 1169 states that the power to appoint the PCSO General Manager is lodged in its Board of Directors, not in the President of the Philippines:

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[49] *Id*. at 65-66.

[50] *Rollo,* p. 4164, Motion for Reconsideration.

[51] *Id*. at 4178-4179.

[52] *Id*. at 4174-4173.

[53] *Id*. at 4179.

[54] *Id*. at 4179-4181.

[55] *Id.* at 4177. The prosecution states: "the PCSO Board designated [Uriarte] by virtue of Arroyo's '*I desire'* letter/order. Obviously, Uriarte's appointment by Arroyo was a clear departure from Section 2 of [Republic Act] No. 1169.

[56] An Act Providing for Charity Sweepstakes, Horse Races, and Lotteries.

Section 2. The [PCSO] general manager shall be appointed by the [PCSO] Board of Directors and he [or she] can be removed or suspended only for cause as provided by law. He [or she] shall have the direction and control of the Office in all matters which are not specifically reserved for action by the Board. Subject to the approval of the Board of Directors, he [or she] shall also appoint the personnel of the Office, except the Auditor and the personnel of the Office of the Auditor who shall be appointed by the Auditor General.

The purpose for the disbursement of Confidential and Intelligence Fund was not specifically detailed.[57] Letter of Instruction No. 1282 expressly provides that requests for intelligence funds must particularly state the purposes for which these would be spent:[58]

Effective immediately, all requests for the allocation or release of intelligence funds shall indicate *in full detail* the specific purposes for which said funds shall be spent and shall explain the circumstances giving rise to the necessity for the expenditure and the particular aims to be accomplished. (Emphasis supplied)[59]

According to the Sandiganbayan, Uriarte and Benigno Aguas (Aguas) made sweeping certifications that these funds were used for anti-lottery fraud and anti-terrorist operations, thus:

In an attempt to explain and justify the use of these [Confidential and Intelligence Fund] funds, Uriarte together with Aguas, certified that these were utilized for the following purposes:

a) Fraud and threat that affect integrity of operation.

b) Bomb threat, kidnapping, destabilization and terrorism

c) Bilateral and security relation.[60]

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[57] *Id*. at 4174.

[58] L.O.I. No. 1282 (1983).

[59] L.O.I. No. 1282 (1983).

[60] Dissenting Opinion of *J*. Leonen in *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016, <http://sc.judiciary.gov.ph/jurisprudence/2016/july2016/220598_leonen.pdf> 16 [Per *J*. Bersamin, *En Banc*] citing the Sandiganbayan Resolution dated November 5, 2013.

The prosecution emphasized that the purpose[61] for the disbursement not only lacked particulars, but that the "second and third purposes were never mentioned in Uriarte's letter-requests for additional [Confidential and Intelligence Fund] funds addressed to Arroyo."[62]

Moreover, under Commission on Audit Circular 2003-002, cash advances must be on a per-project basis and must be liquidated within one (1) month from the date the purpose of the cash advance was accomplished. The prosecution adduced proof that the certification of petitioner PCSO Budget and Accounts Officer Aguas that there were enough funds for cash advances[63] was fraudulent, as the Philippine Charity Sweepstakes Office had suffered significant losses from 2006 to 2009.[64]

The liquidation of Uriarte's cash advances, certified to by Aguas, was made on a semi-annual basis—without a monthly liquidation or at least a progress report on the monthly liquidation.[65] The

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[61] According to Uriarte's testimony before the Senate, the main purpose for these cash advances was for the "roll-out" of the small town lottery program. However, the accomplishment report submitted by Aguas shows that ₱137,500,000 was spent on non-related PCSO activities, such as "bomb threat, kidnapping, terrorism and bilateral and security relations." All the cash advances made by Uriarte in 2010 were made in violation of LOI 1282, and COA Circulars 2003-002 and 92-385. These were thus improper use of the additional CIF funds amounting to raids on the PCSO coffers and were ill-gotten because Uriarte had encashed the checks and came into possession of the monies, which she had complete freedom to dispose of, but was not able to properly account for. (Dissenting Opinion of *J*. Leonen in *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016, <http://sc.judiciary.gov.ph/jurisprudence/2016/july2016/220598_leonen.pdf> 13-14 [Per *J*. Bersamin, *En Banc*] citing the Sandiganbayan Resolution dated November 5, 2013.)

[62] Dissenting Opinion of *J*. Leonen in *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016, <http://sc.judiciary.gov.ph/jurisprudence/2016/july2016/220598_leonen.pdf> 16 [Per *J*. Bersamin, *En Banc*] citing the Sandiganbayan Resolution dated November 5, 2013.

[63] *Rollo,* p. 4178.

[64] *Id.* at 4178-4182.

[65] *See* Dissenting Opinion of *J*. Leonen in *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016, <http://sc.judiciary.gov.ph/jurisprudence/2016/july2016/220598_leonen.pdf> 15 [Per *J*. Bersamin, *En Banc*].

liquidation was also questionable. For instance, in 2009, only ₱24.97 million was liquidated, despite the CIF's cash advances totalling ₱138.42 million for the same year.[66] Aguas and Uriarte likewise submitted what appeared to be spurious accomplishment reports, stating that the cash advances were remitted to law enforcement agencies, which denied these remittances.[67]

In addition, Aguas did not object to the charges that he falsified his certifications of fund availability, and that the repeated release of Confidential and Intelligence Fund cash advances was riddled with several serious irregularities.[68] He later disclosed that the funds were transferred to the Office of the President, which was under Arroyo's full control as then President of the Philippines.[69] This was resolved by the Sandiganbayan on April 6, 2015.

According to the prosecution, "Uriarte and Valencia [i.e. PCSO Board of Directors Chairperson Sergio O. Valencia] continued to receive [Confidential and Intelligence Fund] cash advances despite having earlier unliquidated cash advances,"[70] and Aguas could not have correctly certified that the previous liquidations were accounted for.[71] The prosecution further avers that petitioner Commission on Audit Head of Intelligence/Confidential Fund Fraud Audit Unit Nilda B. Plaras "repeatedly issued credit notices in favor of Uriarte and Valencia even as Aguas himself admitted that their [Confidential and Intelligence Fund] advances remained unliquidated. Moreover, Uriarte and Valencia continued to receive [Confidential and Intelligence Fund] advances despite having earlier unliquidated cash advances[.]"

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[66] *Rollo,* p. 4174.

[67] *Id*. at 4179.

[68] *Id*. at 4181.

[69] *Id*. at 4179.

[70] *Id*. at 4175.

[71] *See* Dissenting Opinion of *J*. Leonen in *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016, <http://sc.judiciary.gov.ph/jurisprudence/2016/july2016/220598_leonen.pdf> 15 [Per *J*. Bersamin, *En Banc*].

According to the Sandiganbayan,[72] these acts violate Section 89 of Presidential Decree No. 1445, which states:

> Limitations on cash advance. No cash advance shall be given unless for a legally authorized specific purpose. A cash advance shall be reported on and liquidated as soon as the purpose for which it was given has been served. No additional cash advance shall be allowed to any official or employee unless the previous cash advance given to him is first settled or a proper accounting thereof is made.

The prosecution also argues that before she fled the country and evaded arrest, then PCSO General Manager Uriarte, with Arroyo's complicity,[73] "received and took possession of around 90% of the approximately ₱366 million cash advances from the PCSO's Confidential and Intelligence Fund.[74] As payee, Uriarte drew a total of 48 checks against the Confidential and Intelligence Fund in 2008, 2009, and 2010.[75] She was able to withdraw from the Confidential and Intelligence Fund solely on the basis of Arroyo's approval, which was not ministerial in nature,[76] *and* despite Uriarte not having been designated as a special disbursing officer under Commission on Audit Circulars 92-385 and 03-002.[77]

Uriarte was designated as a special disbursing officer only on February 18, 2009,[78] after several disbursements were already made.[79] She managed to use the additional Confidential and Intelligence Fund at least three (3) times in 2008 and in early 2009, solely through Arroyo's approval.[80]

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[72] *Id*.

[73] *Id*. at 4176.

[74] *Id*. at 4175.

[75] *Id*. at 4174.

[76] *Id*. at 4177.

[77] *Id*. at 1652-1653.

[78] *Id*. at 1653.

[79] At that time, three (3) disbursements were already made based on the approval of the requests of PCSO General Manager Uriarte. These were made on April 2, 2008, August 13, 2008, and January 19, 2009.

[80] *Rollo* (G.R. No. 220598), p. 1653.

The prosecution further highlights that Uriarte "is a fugitive from justice" and has remained at large.[81] Jurisprudence has settled that flight is an indication of guilt.[82] For, indeed, "a truly innocent person would normally grasp the first available opportunity to defend [herself] and to assert [her] innocence."[83] The Sandiganbayan's finding of ample evidence against her is therefore bolstered by her leaving the country and evading arrest.

The prosecution also takes exception to this Court's finding that the commingling of funds is not illegal.[84] Section 6[85] of

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[81] *Id*. at 4174.

[82] *People v. Diaz*, 443 Phil. 67, 89 (2003) [Per J. Austria-Martinez, Second Division].

[83] *People v. Del Mundo*, 418 Phil. 740, 753 (2001) [Per J. Ynares-Santiago, First Division].

[84] *Rollo,* p. 4171.

[85] Rep. Act No. 1169, Sec. 6 provides:

Section 6. Allocation of Net Receipts. — From the gross receipts from the sale of sweepstakes tickets, whether for sweepstakes races, lotteries, or similar activities, shall be deducted the printing cost of such tickets, which in no case shall exceed two percent of such gross receipts to arrive at the net receipts. The net receipts shall be allocated as follows:

A. Fifty-five percent (55%) shall be set aside as a prize fund for the payment of prizes, including those for the owners, jockeys of running horses, and sellers of winning tickets.

Prizes not claimed by the public within one year from date of draw shall be considered forfeited, and shall form part of the charity fund for disposition as stated below.

B. Thirty percent (30%) shall be set aside as contributions to the charity fund from which the Board of Directors, in consultation with the Ministry of Human Settlement on identified priority programs, needs, and requirements in specific communities and with approval of the Office of the President (Prime Minister), shall make payments or grants for health programs, including the expansion of existing ones, medical assistance and services and/or charities of national character, such as the Philippine National Red Cross, under such policies and subject to such rules and regulations as the Board may from time establish and promulgate. The Board may apply part of the contributions to the charity fund to approved investments of the Office pursuant to Section 1 (B) hereof, but in no case shall such application to investments exceed ten percent (10%) of the net receipts from the sale of sweepstakes tickets in any given year.

Republic Act No. 1169 states that PCSO's revenues should be remitted in specific portions to separate funds or accounts, and *not* commingled together. The prosecution assails how the accused diverted public money from the PCSO Charity Fund and Prize Fund to the Operating Fund, and then commingled these funds to "conceal the violation of the restrictions imposed by [Republic Act] No. 1169."[86] The 2007 Annual Audit Report of the Commission on Audit has specifically directed then PCSO officers to immediately put a halt to this practice, but it fell on deaf ears.[87]

In addition, the PCSO had been placed under the supervision and control of the Department of Social Welfare and Development,[88] and later of the Department of Health.[89] Yet, Uriarte was able to bypass departmental approval and divert PCSO funds amounting to ₱244 million to the Office of the President,[90]

Any property acquired by an institution or organization with funds given to it under this Act shall not be sold or otherwise disposed of without the approval of the Office of the President (Prime Minister), and that in the event of its dissolution all such property shall be transferred to and shall automatically become the property of the Philippine Government.

C. Fifteen (15%) percent shall be set aside as contributions to the operating expenses and capital expenditures of the Office.

D. All balances of any funds in the Philippine Charity Sweepstakes Office shall revert to and form part of the charity fund provided for in paragraph (B), and shall be subject to disposition as above stated.The disbursements of the allocation herein authorized shall be subject to the usual auditing rules and regulations.

[86] *Rollo,* p. 4172.

[87] *Id*.

[88] Exec. Order No. 383, Sec. 1 provides:

Section 1. The Philippine Charity Sweepstakes Office shall hereby be under the supervision and control of the Department of Social Welfare and Development.

[89] Exec. Order No. 455, Sec. 1 provides:

Section 1. The Philippine Charity Sweepstakes Office shall hereby be placed under the supervision and control of the Department of Health.

[90] Dissenting Opinion of *J*. Leonen in *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016, <http://sc.judiciary.gov.ph/jurisprudence/2016/july2016/220598_leonen.pdf> [Per *J*. Bersamin, *En Banc*] citing the Sandiganbayan Resolution dated November 5, 2013.

upon the sole approval of Arroyo.[91] Later, with conflict-of-interest, both Uriarte and Valencia approved the disbursement vouchers and made the checks payable to them at the same time.[92]

According to the prosecution, Uriarte requested for additional Confidential and Intelligence Fund, and Arroyo's unqualified approval of these requests was deliberate and willful.[93] The prosecution argues that "[w]ithout [Arroyo's] participation, [Uriarte] could not release any money because there was then no budget for additional [Confidential and Intelligence Fund]."[94] Thus, "Arroyo's unmitigated failure to comply with the laws and rules regulating the approval of the [Confidential and Intelligence Fund] releases betrays any claim of lack of malice on her part."[95] Without Arroyo or Aguas, the conspiracy to pillage the PCSO's Confidential and Intelligence Fund would not have succeeded.[96]

VI

Plunder may be committed in connivance or conspiracy with others. The share that each accused received is not the pivotal consideration. What is more crucial is that the *total amount* amassed is at least ₱50 million.[97] In a conspiracy, the act of one is the act of all. Each conspirator is considered a principal actor of the crime. *Enrile v. People*[98] is on point:

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[91] *Rollo* (G.R. No. 220598), p. 1831.

[92] *Id*. at 4174.

[93] *Id*. at 4177.

[94] *Id*. at 4176.

[95] *Id*. at 4178.

[96] *Id*. at 4181.

[97] *Enrile v. People*, G.R. No. 213455, August 11, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/august2015/213455.pdf> 22 [Per *J*. Brion, *En Banc*].

[98] *Enrile v. People*, G.R. No. 213455, August 11, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/august2015/213455.pdf> [Per *J*. Brion, *En Banc*].

The law on plunder provides that it is committed by "*a public officer who acts by himself or in connivance with. . .*" The term "connivance" suggests an agreement or consent to commit an unlawful act or deed with another; to *connive* is to cooperate or take part secretly with another. It implies both knowledge and assent that may either be active or passive.

Since the crime of plunder may be done in connivance or in conspiracy with other persons, and the Information filed clearly alleged that Enrile and Jessica Lucila Reyes **conspired** with one another and with Janet Lim Napoles, Ronald John Lim and John Raymund De Asis, then it is unnecessary to specify, as an essential element of the offense, whether the ill-gotten wealth amounting to at least ₱172,834,500.00 had been acquired by one, by two or by all of the accused. ***In the crime of plunder, the amount of ill-gotten wealth acquired by each accused in a conspiracy is immaterial for as long as the total amount amassed, acquired or accumulated is at least ₱50 million***.[99]

Section 2 of the Anti-Plunder Law focuses on the "aggregate amount or total value" amassed, accumulated, or acquired, not its severed distributions among confederates. Thus, in the present case, it is unnecessary to specify whether the allegedly amassed amount of ₱365,997,915.00 ultimately came to the possession of one, some, or all of the accused.

Enrile also underscores that conspiracy is not the essence of plunder.[100] To sufficiently charge conspiracy as a mode of committing plunder, an information may simply state that the accused "conspired with one another":[101]

We point out that conspiracy in the present case is not charged as a crime by itself but only as the mode of committing the crime. Thus, *there is no absolute necessity of reciting its particulars in the Information because conspiracy is not the gravamen of the offense charged.*

It is enough to allege conspiracy as a mode in the commission of [plunder] in either of the following manner: (1) *by use of the word "conspire," or its derivatives or synonyms, such as confederate,*

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[99] *Id*. at 22.

[100] *Id*.

[101] *Id*.

connive, collude; or (2) by allegations of basic facts constituting the conspiracy in a manner that a person of common understanding would know what is intended, and with such precision as the nature of the crime charged will admit, to enable the accused to competently enter a plea to a subsequent indictment based on the same facts.[102] (Emphasis in the original)

In this case, the accused were properly informed that they were to be answerable for the charge of plunder "in connivance" with each other. As in *Enrile*, the information here uses the words, "conniving, conspiring, and confederating":

The undersigned Assistant Ombudsman and Graft Investigation and Prosecution Officer III, Office of the Ombudsman, hereby accuse GLORIA MACAPAGAL-ARROYO, ROSARIO C. URIARTE, SERGIO O. VALENCIA, MANUEL L. MORATO, JOSE R. TARUC V, RAYMUNDO T. ROQUERO, MA. FATIMA A.S. VALDES, BENIGNO B. AGUAS, REYNALDO A. VILLAR and NILDA B. PLARAS, of the crime of PLUNDER, as defined by, and penalized under Section 2 of Republic Act (R.A.) No. 7080, as amended by R.A. No. 7659, committed, as follows:

That during the period from January 2008 to June 2010 or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, accused GLORIA MACAPAGAL-ARROYO, then the President of the Philippines, ROSARIO C. URIARTE, then General Manager and Vice Chairman, SERGIO O. VALENCIA, then Chairman of the Board of Directors, MANUEL L. MORATO, JOSE R. TARUC V, RAYMUNDO T. ROQUERO, MA. FATIMA A.S. VALDES, then members of the Board of Directors, BENIGNO B. AGUAS, then Budget and Accounts Manager, all of the Philippine Charity Sweepstakes Office (PCSO), REYNALDO A. VILLAR, then Chairman, and NILDA B. PLARAS, then Head of Intelligence/Confidential Fund Fraud Audit Unit, both of the Commission on Audit, all public officers committing the offense in relation to their respective offices and taking undue advantage of their respective official positions, authority, relationships, connections or influence, *conniving, conspiring and confederating with one another,* did then and there willfully, unlawfully and criminally amass, accumulate and/or acquire, directly or indirectly, ill-gotten wealth

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[102] *Id*.

in the aggregate amount or total value of THREE HUNDRED SIXTY FIVE MILLION NINE HUNDRED NINETY SEVEN THOUSAND NINE HUNDRED FIFTEEN PESOS (PHP365,997,915.00), more or less, through any or a combination or a series of overt or criminal acts, or similar schemes or means, described as follows: . . .[103]

I take exception to the majority's July 19, 2016 Decision stating that the prosecution needed to specifically allege in the information whether the conspiracy was by express agreement, by wheel conspiracy, or by chain conspiracy.[104] In *Enrile*, an accused's assent in a conspiracy may be active or *passive*, and may be *alleged simply "by use of the word 'conspire,' or its derivatives or synonyms*, such as confederate, connive, collude[.]"[105] The prosecution has faithfully complied with these requirements.

The information is valid in all respects. *Retroactively* mandating additional averments for the prosecution violates its right to due process.

VII

"Raids on the public treasury" must be understood in its plain meaning. There is no need to derive its meaning from the other words mentioned in Section 1(d)(1) of the Anti-Plunder Law. It does not inherently entail taking *for personal gain.*

People v. Sandiganbayan[106] emphasized that the words in a statute must generally be understood in their natural, plain, and ordinary meaning, unless the lawmakers have evidently assigned a technical or special legal meaning to these words.[107] "The intention of the

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[103] *Rollo*, pp. 305-307-A.

[104] *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/220598.pdf> 32-33 [Per *J.* Bersamin, *En Banc*].

[105] *Enrile v. People*, G.R. No. 213455, August 11, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/august2015/213455.pdf>22 [Per *J.* Brion, *En Banc*].

[106] *People v. Sandiganbayan*, 613 Phil. 407 (2009) [Per *J.* Peralta, Third Division].

[107] *Id.* at 426.

lawmakers – who are, ordinarily, untrained philologists and lexicographers – to use statutory phraseology in [a natural, plain, and ordinary] manner is always presumed."[108]

Contrary to the majority's position,[109] there are no words with which the term "raids on the public treasury," as mentioned in Section 1(d)(1) of the Anti-Plunder Law are to be associated, thereby justifying the application of *noscitur a sociis*. Misappropriation, conversion, misuse, and malversation of public funds are items enumerated distinctly from "raids on the public treasury," they being separated by the disjunctive "or."[110] Therefore, there is no basis for insisting upon the term "raids on the public treasury" the concept of personal benefit.

Even if the preceding terms were to be associated with "raids on the public treasury," it does not follow that "personal benefit" becomes its element. For example, malversation does not inherently involve taking for one's personal benefit. As pointed out in the prosecution's Motion for Reconsideration,[111] malversation under Article 220[112] of the Revised Penal Code

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[108] *Id.*

[109] *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/220598.pdf> 44-45 [Per *J.* Bersamin, *En Banc*].

The Decision stated:

To discern the proper import of the phrase raids on the public treasury, the key is to look at the accompanying words: misappropriation, conversion, misuse or malversation of public funds. This process is conformable with the maxim of statutory construction *noscitur a sociis*, by which the correct construction of a particular word or phrase that is ambiguous in itself or is equally susceptible of various meanings may be made by considering the company of the words in which the word or phrase is found or with which it is associated. Verily, a word or phrase in a statute is always used in association with other words or phrases, and its meaning may, therefore, be modified or restricted by the latter.

[110] Rep. Act No. 7060, Sec. 1(d)(1) states that plunder is committed "through misappropriation, conversion, misuse, or malversation of public funds *or* raids on the public treasury."

[111] *Rollo,* p. 4169, Motion for Reconsideration.

[112] REV. PEN. CODE, Art. 220 provides:

does not require that the offender personally benefited from the crime. It only requires that he or she used the funds for a purpose different from that for which the law appropriated them.

This finds further support in the Congress' deletion of the phrase, "knowingly benefited," from the final text of Republic Act No. 7080.[113]

This Court can also apply by analogy the principles governing the crime of theft. Like in plunder, theft involves the unlawful taking of goods belonging to another.[114] In theft, the mere act of taking—regardless of actual gain—already consummates the crime.[115] In *Valenzuela v. People*:[116]

Article 220. Illegal Use of Public Funds or Property. — Any public officer who shall apply any public fund or property under his administration to any public use other than that for which such fund or property were appropriated by law or ordinance shall suffer the penalty of *prisión correccional* in its minimum period or a fine ranging from one-half to the total of the sum misapplied, if by reason of such misapplication, any damage or embarrassment shall have resulted to the public service. In either case, the offender shall also suffer the penalty of temporary special disqualification.

If no damage or embarrassment to the public service has resulted, the penalty shall be a fine from 5 to 50 per cent of the sum misapplied.

[113] Record of the Senate, Vol. IV, No. 141, p. 1403 (1989).

[114] REV. PEN. CODE, Art. 308 provides:

Article 308. Who are liable for theft. — Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

Theft is likewise committed by:

1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;

2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or object of the damage caused by him; and

3. Any person who shall enter an inclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather cereals, or other forest or farm products.

[115] *Valenzuela v. People,* 552 Phil. 381, 416-417 (2008) [Per *J.* Tinga, *En Banc*].

[116] *Valenzuela v. People*, 552 Phil. 381 (2008) [Per *J.* Tinga, *En Banc*].

Unlawful taking, which is the deprivation of one's personal property, is the element which produces the felony in its consummated stage x x x

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. . .The presumed inability of the offenders to freely dispose of [i.e. gain from] the stolen property does not negate the fact that the *owners have already been deprived of their right to possession* upon the completion of the taking.

[T]he taking has been completed, causing the unlawful deprivation of property, and ultimately the consummation of the theft.[117]

This standard for theft takes on greater significance in plunder. *Valenzuela* reminds us to not lose sight of the owners' deprivation of their property.[118] Here, public funds were taken from the government. Theft involves larceny against individuals; plunder involves pillage of the State. Certainly, it is much more depraved and heinous than theft:

Finally, any doubt as to whether the crime of plunder is a *malum in se* must be deemed to have been resolved in the affirmative by the decision of Congress in 1993 to include it *among the heinous crimes* punishable by *reclusion perpetua* to death.[119]

Plunder is a betrayal of public trust. Thus, it cannot require an element that a much lesser crime of the same nature does not even require. Ruling otherwise would "introduce a convenient defense for the accused which does *not* reflect any legislated intent."[120]

To raid means to "steal from, break into, loot, [or] plunder."[121] Etymologically, it comes from the Old English word, "rad,"

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[117] *Id*. at 417-418.

[118] *Id*. at 418.

[119] *Estrada v. Sandiganbayan,* 421 Phil. 290, 365 (2001) [Per J. Bellosillo, *En Banc*].

[120] *Valenzuela v. People*, 552 Phil. 381, 417 (2008) [Per J. Tinga, *En Banc*].

[121] Collins Dictionary, <https://www.collinsdictionary.com/dictionary/english/raid> (last visited April 17, 2017).

which referred to the act of riding[122] or to an incursion along the border.[123] It described the incursion into towns by malefactors on horseback (i.e. mounted military expedition[124]), who fled easily as peoples of more sedentary cultures could not keep pace with them.[125] In 1863, during the American Civil War, the word, "raid," gave birth to an agent noun, "raider,"[126] or a person trained to participate in a sudden attack against the enemy.[127] In more recent times, "raider" has evolved to likewise refer to "a person who seizes control of a company, as by secretly buying stock and gathering proxies."[128] The act of taking through stealth, treachery, or otherwise taking advantage of another's weakness characterizes the word, "raid" or "raider."

The specific phrase used in the Anti-Plunder Law – "raids on the pubic treasury" – is of American origin. It was first used during the Great Depression, when the United States Congress sought to pass several bills, such as an appropriation of $35 million to feed people and livestock,[129] in an attempt to directly lift Americans from squalor.[130] Then President Herbert

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[122] *ANDREAS H. JUCKER, DANIELA LANDERT, ANNINA SEILER, NICOLE STUDER-JOHO, MEANING IN THE HISTORY OF ENGLISH: WORDS AND TEXTS IN CONTEXT* 64 (2013).

[123] Collins Dictionary, <https://www.collinsdictionary.com/dictionary/english/raid> (last visited April 17, 2017).

[124] Online Etymology Dictionary, <http://www.etymonline.com/index.php?term=raid&allowed_in_frame=0> (last visited April 17, 2017).

[125] The Science Show, <https://web.archive.org/web/20081006030339/http://www.abc.net.au/rn/science/ss/stories/s70986.htm> (last visited April 17, 2017).

[126] Douglas Harper, Online Etymology Dictionary, <http://www.dictionary.com/browse/raider> (last visited April 17, 2017).

[127] Collins Dictionary, <https://www.collinsdictionary.com/dictionary/english/raid> (last visited April 17, 2017).

[128] Based on the Random House Dictionary, Random House, Inc. (2017) <http://www.dictionary.com/browse/raider> (last visited April 17, 2017).

[129] *ROBERT A. CARO, THE PATH TO POWER: THE YEARS OF LYNDON JOHNSON* 247 (1982).

[130] Herbert Hoover, <http://www.history.com/topics/us-presidents/herbert-hoover> (last visited April 17, 2017).

Hoover did not see wisdom in government intervention. He vetoed these bills, famously declaring that "[p]rosperity cannot be restored by *raids upon the public treasury*."[131]

In its plain meaning, and taking its history and etymological development into account, "raids on the public treasury" refers to dipping one's hands into public funds, taking them as booty. In the context of the Anti-Plunder Law, this may be committed by a public officer through fraud, stealth, or secrecy, done over a period of time.[132] The Sandiganbayan's November 5, 2013 Resolution in this case is enlightening:

> [A] "raid on the public treasury" can be said to have been achieved thr[ough] the pillaging or looting of public coffers either through misuse, misappropriation or conversion, without need of establishing gain or profit to the raider. Otherwise stated, once a "raider" gets material possession of a government asset through improper means and has free disposal of the same, the raid or pillage is completed. . . .[133]

There are reasonable grounds for proceeding with trial. The voluminous records and pieces of evidence, consisting of at least 600 documentary exhibits, testimonies of at least 10 prosecution witnesses, and case records of at least 40 folders[134]—which the Sandiganbayan carefully probed for years[135]—point to a protracted scheme of raiding the public treasury to amass ill-gotten wealth. There were ostensible irregularities attested to by the prosecution in the disbursement of the Philippine Charity Sweepstakes Office funds, such as

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[131] Herbert Hoover, <http://www.history.com/topics/us-presidents/herbert-hoover> (last visited April 17, 2017).

[132] *See* S.B. No. 733, as cited in *Estrada v. Sandiganbayan*, 427 Phil. 820, 851 (2002) [Per *J.* Puno, *En Banc*].

[133] *Rollo*, pp. 450-510.

[134] *Id*. at 4175.

[135] *Id*. at 4164.

the accused's commingling of funds,[136] their non-compliance with Letter of Instruction No. 1282,[137] and the unilateral approval of disbursements.[138]

VIII

Under Section 119 of Rule 23 of the Revised Rules on Criminal Procedure, an order denying a demurrer to evidence may not be assailed through an appeal or by certiorari before judgment. Thus, the accused's remedy for the Sandiganbayan's denial of their demurrer is to "continue with the case in due course and when an unfavorable verdict is handed down, to appeal in the manner authorized by law."[139]

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[136] The additional allocations for CIF were of increasing amounts running into the hundreds of millions of pesos. In 2010 alone, it was One Hundred Fifty Million Pesos (₱150,000,000.00). The General Manager of the PCSO was able to disburse more than One Hundred Thirty Eight Million Pesos (₱138,000,000.00) to herself. That disbursement remains unaccounted.

Despite continued annual warnings from the Commission on Audit with respect to the illegality and irregularity of the co-mingling of funds that should have been allocated for the Prize Fund, the Charitable Fund, and the Operational Fund, this co-mingling was maintained.

See Dissenting Opinion of *J*. Leonen in *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016, <http://sc.judiciary.gov.ph/jurisprudence/2016/july2016/220598_leonen.pdf> [Per *J.* Bersamin, *En Banc*].

[137] This Letter of Instruction requires a request's specification of three (3) things: first, the specific purposes for which the funds shall be used; second, circumstances that make the expense necessary; and third, the disbursement's particular aims. L.O.I. No. 1282 (1983), par. 2 provides: "Effective immediately, all requests for the allocation or release of intelligence funds shall indicate in full detail the specific purposes for which said funds shall be spent and shall explain the circumstances giving rise to the necessity for the expenditure and the particular aims to be accomplished."

[138] Uriarte used Arroyo's approval to illegally accumulate these CIF funds which she encashed during the period 2008-2010. Uriarte utilized Arroyo's approval to secure PCSO Board confirmation of such additional CIF funds and to "liquidate" the same resulting in the questionable credit advices issued by accused Plaras. These were simply consummated raids on public treasury. (*See* Dissenting Opinion of *J*. Leonen in *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016, <http://sc.judiciary.gov.ph/jurisprudence/2016/july2016/220598_leonen.pdf> [Per *J*. Bersamin, *En Banc*] citing the Sandiganbayan Resolution dated November 5, 2013.)

[139] *Soriquez v. Sandiganbayan*, 510 Phil. 709, 719 (2015) [Per *J*. Garcia, Third Division].

The majority's July 19, 2016 Decision cites *Nicolas v. Sandiganbayan*[140] in asserting that this Court may review the Sandiganbayan's denial of a demurrer when there is grave abuse of discretion. *Nicolas* stated:

> [T]he general rule prevailing is that [certiorari] does not lie to review an order denying a demurrer to evidence, which is equivalent to a motion to dismiss, filed after the prosecution has presented its evidence and rested its case.
>
> *Such order, being merely interlocutory, is not appealable; neither can it be the subject of a petition for certiorari.* The rule admits of exceptions, however. Action on a demurrer or on a motion to dismiss rests on the sound exercise of judicial discretion.[141] (Emphasis supplied)

Indeed, *Nicolas* illustrates an instance when this Court overruled the Sandiganbayan's denial of a demurrer for having been issued with grave abuse of discretion.[142] What sets *Nicolas* apart from this case, however, is that the Sandiganbayan's grave abuse of discretion was so patent in *Nicolas*. There, Economic Intelligence and Investigation Bureau Commissioner Wilfred A. Nicolas was administratively and criminally charged for his alleged bad faith and gross neglect of duty. This Court exonerated him in the administrative charge, finding that the records are bereft of any substantial evidence of bad faith and gross negligence on his part.[143] Considering that the criminal case—violation of Section 3(e) of Republic Act No. 3019, the Anti-Graft and Corrupt Practices Act, based on his alleged bad faith and gross negligence—required the highest burden of proof beyond reasonable doubt, then the finding that there was no substantial evidence of his bad faith and gross negligence binds the criminal case for the same act complained of.[144]

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[140] *Nicolas v. Sandiganbayan,* 568 Phil. 297 (2008) [Per *J*. Carpio-Morales, Second Division].

[141] *Id*. at 309.

[142] *Id*.

[143] *Id*.

[144] *Id*.

In contrast, here, the prosecution has sufficient evidence to establish a *prima facie* case that accused committed plunder or at least malversation. In ruling on a demurrer to evidence, this Court only needs to ascertain whether there is "competent or sufficient evidence to establish a *prima facie* case to sustain the indictment."[145]

The prosecution should have been given the chance to present this *prima facie* case against the accused. As I noted in my dissent to the majority's July 19, 2016 Decision:

> First, evidence was adduced to show that there was co-mingling of PCSO's Prize Fund, Charity Fund, and Operating Fund. In the Annual Audit Report of PCSO for 2007, the Commission on Audit already found this practice of having a "combo account" questionable. The prosecution further alleged that this co-mingling was "to ensure that there is always a readily accessible fund from which to draw [Confidential and Intelligence Fund] money."
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>
> Second, the prosecution demonstrated — through Former President Arroyo's handwritten notations — that she personally approved PCSO General Manager Rosario C. Uriarte's (Uriarte) "requests for the allocation, release and use of additional [Confidential and Intelligence Fund.]" ***The prosecution stressed that these approvals were given despite Uriarte's generic one-page requests, which ostensibly violated Letter of Instruction No. 1282's requirement that, for intelligence funds to be released, there must be a specification of: (1) specific purposes for which the funds shall be used; (2) circumstances that make the expense necessary; and (3) the disbursement's particular aims. The prosecution further emphasized that Former President Arroyo's personal approvals were necessary, as Commission on Audit Circular No. 92-385's stipulates that confidential and intelligence funds may only be released upon approval of the President of the Philippines***. Unrefuted, these approvals are indicative of Former President Arroyo's indispensability in the scheme to plunder.
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> x x x x x x x x x

[145] *Id*. at 311.

Third, the prosecution demonstrated that Uriarte was enabled to withdraw from the CIF solely on the strength of Former President Arroyo's approval and despite not having been designated as a special disbursing officer, pursuant to Commission on Audit Circulars 92-385 and 03-002.

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Fourth, there were certifications on disbursement vouchers issued and submitted by Aguas, in his capacity as PCSO Budget and Accounts Manager, which stated that: there were adequate funds for the cash advances; that prior cash advances have been liquidated or accounted for; that the cash advances were accompanied by supporting documents; and that the expenses incurred through these were in order. As posited by the prosecution, these certifications facilitated the drawing of cash advances by PCSO General Manager Uriarte and Chairperson Sergio Valencia.

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Fifth, officers from the Philippine National Police, the Armed Forces of the Philippines, and the National Bureau of Investigation gave testimonies to the effect that no intelligence activities were conducted by PCSO with their cooperation, contrary to Uriarte's claims. . . *The prosecution added that no contracts, receipts, correspondences, or any other documentary evidence exist to support expenses for PCSO's intelligence operations. These suggest that funds allocated for the CIF were not spent for their designated purposes, even as they appeared to have been released through cash advances*. This marks a critical juncture in the alleged scheme of the accused. The disbursed funds were no longer in the possession and control of PCSO and, hence, susceptible to misuse or malversation.

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Sixth, another curious detail was noted by the prosecution: that Former President Arroyo directly dealt with PCSO despite her having issued her own executive orders, which put PCSO under the direct control and supervision of other agencies.[147] (Emphasis in the original)

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[147] Dissenting Opinion of *J.* Leonen in *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016 <http://sc.judiciary.gov.ph/jurisprudence/2016/july2016/220598_leonen.pdf> 18-32 [Per *J.* Bersamin, *En Banc*].

The matters established by the prosecution belie any grave abuse of discretion on the part of the Sandiganbayan when it ruled that trial must proceed. This is especially considering that the Anti-Plunder Law does not even require proof of every single act alleged to have been committed by the accused. What it penalizes is the overarching scheme characterized by *a series or combination of overt or criminal acts*.[148] In *Jose "Jinggoy" Estrada v. Sandiganbayan*:[149]

> A study of the history of R.A. No. 7080 will show that the law was crafted to avoid the mischief and folly of filing multiple informations. The Anti-Plunder Law was enacted in the aftermath of the *Marcos regime* where charges of ill-gotten wealth were filed against former President Marcos and his alleged cronies. *Government prosecutors found no appropriate law to deal with the multitude and magnitude of the acts allegedly committed by the former President to acquire illegal wealth.* They also found that under the then existing laws such as the Anti-Graft and Corrupt Practices Act, the Revised Penal Code and other special laws, the acts involved different transactions, different time and different personalities. *Every transaction constituted a separate crime and required a separate case and the over-all conspiracy had to be broken down into several criminal and graft charges.* The preparation of multiple Informations was a legal nightmare but eventually, thirty-nine (39) separate and independent cases were filed against practically the same accused before the Sandiganbayan. Republic Act No. 7080 or the Anti-Plunder Law was enacted precisely to address this procedural problem.[150] (Emphasis in the original, citations omitted)

Thus, as I emphasized in my Dissent to the majority's July 19, 2016 Decision:

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[148] Rep. Act No. 7080, Sec. 4 provides:

> Section 4. Rule of Evidence. — For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, it being sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy.

[149] *Estrada v. Sandiganbayan*, 427 Phil. 820 (2002) [Per *J*. Puno, *En Banc*].

[150] *Id*. at 851.

It would be inappropriate to launch a full-scale evaluation of the evidence, lest this Court—an appellate court, vis-à-vis the Sandiganbayan's original jurisdiction over plunder—be invited to indulge in an exercise which is not only premature, but also one which may entirely undermine the Sandiganbayan's competence. Nevertheless, even through a prima facie review, the prosecution adduced evidence of a combination or series of events that appeared to be means in a coherent scheme to effect a design to amass, accumulate, or acquire ill-gotten wealth. Without meaning to make conclusions on the guilt of the accused, specifically of petitioners, these pieces of evidence beg, at the very least, to be addressed during trial. Thus, there was no grave abuse of discretion on the part of the Sandiganbayan.[151]

IX

Even granting that the prosecution has failed to establish as case for plunder, trial must nevertheless proceed for malversation.

This Court has consistently held[152] that the lesser offense of malversation can be included in plunder when the amount amassed reaches at least ₱50,000,000.00. The predicate acts of bribery and malversation do not need to be charged under separate informations when a person has already been charged with plunder.

I reiterate the following from my dissent from the majority's July 19, 2016 Decision:

This Court's statements in *Estrada v. Sandiganbayan* are an acknowledgement of how the predicate acts of bribery and malversation (if applicable) need not be charged under separate informations when one has already been charged with plunder:

> A study of the history of R.A. No. 7080 will show that the law was crafted to avoid the mischief and folly of filing multiple

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[151] Dissenting Opinion of *J.* Leonen in *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016, <http://sc.judiciary.gov.ph/jurisprudence/2016/july2016/220598_leonen.pdf> 10 [Per *J.* Bersamin, *En Banc*].

[152] See *Estrada v. Sandiganbayan,* 421 Phil. 290 (2001) [Per *J.* Bellosillo, *En Banc*]; *Enrile v. People,* G.R. No. 213455, August 11, 2015, 766 SCRA 1 [Per *J.* Brion, *En Banc*]; *Serapio v. Sandiganbayan*, 444 Phil. 499 (2003) [Per *J.* Callejo Sr., *En Banc*]; *Estrada v. Sandiganbayan*, 427 Phil. 820 (2002) [Per *J.* Puno, *En Banc*].

> informations. The Anti-Plunder Law was enacted in the aftermath of the Marcos regime where charges of ill-gotten wealth were filed against former President Marcos and his alleged cronies. *Government prosecutors found no appropriate law to deal with the multitude and magnitude of the acts allegedly committed by the former President to acquire illegal wealth.* They also found that under the then existing laws such as the Anti-Graft and Corrupt Practices Act, the Revised Penal Code and other special laws, the acts involved different transactions, different time and different personalities. *Every transaction constituted a separate crime and required a separate case and the over-all conspiracy had to be broken down into several criminal and graft charges*. The preparation of multiple Informations was a legal nightmare but eventually, thirty-nine (39) separate and independent cases were filed against practically the same accused before the Sandiganbayan. Republic Act No. 7080 or the Anti-Plunder Law was enacted precisely to address this procedural problem. (Emphasis in the original, citations omitted)

In *Atty. Serapio v. Sandiganbayan*, the accused assailed the information for charging more than one offense: bribery, malversation of public funds or property, and violations of Sec. 3(e) of Republic Act No. 3019 and Section 7(d) of Republic Act No. 6713. This Court observed that "the acts alleged in the information are not separate or independent offenses, but are predicate acts of the crime of plunder." The Court, quoting the Sandiganbayan, clarified:

> It should be stressed that the Anti-Plunder law specifically Section 1(d) thereof does not make any express reference to any specific provision of laws, other than R.A. No. 7080, as amended, which coincidentally may penalize as a separate crime any of the overt or criminal acts enumerated therein. The said acts which form part of the combination or series of act are described in their generic sense. Thus, aside from 'malversation' of public funds, the law also uses the generic terms 'misappropriation,' 'conversion' or 'misuse' of said fund. The fact that the acts involved may likewise be penalized under other laws is incidental. The said acts are mentioned only as predicate acts of the crime of plunder and the allegations relative thereto are not to be taken or to be understood as allegations charging separate criminal offenses punished under the Revised Penal Code, the Anti-Graft and Corrupt Practices Act and Code of Conduct and Ethical Standards for Public Officials and Employees.

The observation that the accused in these petitions may be made to answer for malversation was correctly pointed out by Justice Ponferrada of the Sandiganbayan in his separate concurring and dissenting opinion:

> There is evidence, however, that certain amounts were released to accused Rosario Uriarte and Sergio Valencia and these releases were made possible by certain participatory acts of accused Arroyo and Aguas, as discussed in the subject Resolution. Hence, there is a need for said accused to present evidence to exculpate them from liability which need will warrant the denial of their Demurrer to Evidence, as under the variance rule they maybe held liable for the lesser crimes which are necessarily included in the offense of plunder.

Significantly, the Sandiganbayan's Resolution to the demurrers to evidence includes the finding that the PCSO Chairperson Valencia, should still be made to answer for malversation as included in the Information in these cases. Since the Information charges conspiracy, both petitioners in these consolidated cases still need to answer for those charges. Thus, the demurrer to evidence should also be properly denied. It would be premature to dismiss and acquit the petitioners.[153]

X

The Anti-Plunder Law penalizes the most consummate larceny and economic treachery perpetrated by repositories of public trust. The majority's Decision—which effectively makes more stringent the threshold for conviction by implying elements not supported by statutory text—cripples the State's capacity to exact accountability. In *Joseph Ejercito Estrada v. Sandiganbayan*:[154]

Drastic and radical measures are imperative to fight the increasingly sophisticated, extraordinarily methodical and economically catastrophic looting of the national treasury. Such is the Plunder Law, especially designed to disentangle those ghastly tissues of grand-scale corruption which, if left unchecked, will spread like a malignant tumor and ultimately consume the moral and institutional fiber of our nation. The Plunder Law, indeed, is a living testament to the will of the legislature to ultimately

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[153] Dissenting Opinion of *J.* Leonen in *Macapagal-Arroyo v. People,* G.R. No. 220598, July 19, 2016, <http://sc.judiciary.gov.ph/jurisprudence/2016/july2016/220598_leonen.pdf> 35-36 [Per *J.* Bersamin, *En Banc*].

[154] *Estrada v. Sandiganbayan*, 421 Phil. 290 (2001) [Per *J.* Bellosillo, *En Banc*].

eradicate this scourge and thus secure society against the avarice and other venalities in public office.

These are times that try men's souls. In the checkered history of this nation, few issues of national importance can equal the amount of interest and passion generated by petitioner's ignominious fall from the highest office, and his eventual prosecution and trial under a virginal statute. This continuing saga has driven a wedge of dissension among our people that may linger for a long time. Only by responding to the clarion call for patriotism, to rise above factionalism and prejudices, shall we emerge triumphant in the midst of ferment.[155] (Emphasis in supplied)

In issuing the Resolutions denying petitioners' demurrers to evidence, the Sandiganbayan acted well-within its jurisdiction and competence. It is not for us to substitute our wisdom for that of the court which presided over the full conduct of trial, as well as the reception and scrutiny of evidence.

The rule proscribing appeals to denials of demurrers to evidence is plain and basic. An accused's recourse is to present evidence and to rebut the prosecution's evidence. The petitioners here failed to establish an exceptional predicament.

This Court's overruling of the April 6, 2015 and September 10, 2015 resolutions of the Sandiganbayan on the strength of findings of inadequacy on the part of the prosecution, but based on standards introduced only upon the rendition of this Court's July 19, 2016 Decision, violated the prosecution's constitutional right to due process. Both the prosecution and the accused deserve fairness: the prosecution, that it may sufficiently establish its case in contemplation of every appropriate legal standard; and the accused, that they may more competently dispel any case the prosecution may have established against them.

Trial must, thus, proceed.

Accordingly, I vote to **GRANT** the Motion for Reconsideration. Public respondent Sandiganbayan committed no grave abuse of discretion and acted within its competence and jurisdiction in issuing the assailed April 6, 2015 and September 10, 2015 Resolutions.

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[155] *Id.* at 367.

EN BANC

[G.R. No. 227158. April 18, 2017]

JOSEPH C. DIMAPILIS, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE OF THE PHILIPPINES; CERTIFICATE OF CANDIDACY; SHALL STATE, AMONG OTHERS, THAT THE PERSON FILING IT IS ELIGIBLE FOR THE OFFICE HE SEEKS TO RUN.— A CoC is a formal requirement for eligibility to public office. Section 74 of the OEC provides that the CoC of the person filing it shall state, among others, that he is eligible for the office he seeks to run, and that the facts stated therein are true to the best of his knowledge. To be "eligible" relates to the capacity of holding, as well as that of being elected to an office. Conversely, "ineligibility" has been defined as a "disqualification or legal incapacity to be elected to an office or appointed to a particular position." In this relation, **a person intending to run for public office must not only possess the required qualifications for the position for which he or she intends to run, but must also possess none of the grounds for disqualification under the law.**

2. ID.; ID.; ID.; ID.; PERPETUAL DISQUALIFICATION TO HOLD PUBLIC OFFICE IS A MATERIAL FACT INVOLVING ELIGIBILITY WHICH RENDERS THE CERTIFICATE OF CANDIDACY VOID FROM THE START.— In this case, petitioner had been found guilty of Grave Misconduct by a final judgment, and punished with dismissal from service with all its accessory penalties, including perpetual disqualification from holding public office. Verily, **perpetual disqualification to hold public office is a material fact involving eligibility** which rendered petitioner's CoC void from the start since he was not eligible to run for any public office at the time he filed the same.

3. ID.; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS; HAS THE LEGAL DUTY TO CANCEL THE CERTIFICATE OF CANDIDACY OF ANYONE SUFFERING FROM THE ACCESSORY PENALTY OF PERPETUAL DISQUALIFICATION TO HOLD PUBLIC OFFICE.— Under Section 2 (1), Article IX (C) of the 1987 Constitution, the COMELEC has the duty to "[e]nforce and administer all laws and regulations relative to the conduct of an election x x x." The Court had previously ruled that **the COMELEC has the legal duty to cancel the CoC of anyone suffering from the accessory penalty of perpetual disqualification to hold public office,** albeit, arising from a criminal conviction. Considering, however, that Section 52 (a), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service similarly imposes the penalty of perpetual disqualification from holding public office as an accessory to the penalty of dismissal from service, the Court sees no reason why the ratiocination enunciated in such earlier criminal case should not apply here x x x. As petitioner's disqualification to run for public office pursuant to the final and executory OMB rulings dismissing him from service now stands beyond dispute, ***it is incumbent upon the COMELEC to cancel petitioner's CoC as a matter of course,*** else it be remiss in fulfilling its Constitutional duty to enforce and administer all laws and regulations relative to the conduct of an election.

4. ID.; ELECTION LAWS; LOCAL ELECTIVE OFFICES; DISQUALIFICATION OF CANDIDATES; CONDONATION DOCTRINE; INAPPLICABLE WHEN THE ACCESSORY PENALTY OF PERPETUAL DISQUALIFICATION TO HOLD PUBLIC OFFICE HAD ALREADY ATTACHED AND REMAINED EFFECTIVE AT THE TIME OF THE FILING OF THE CERTIFICATE OF CANDIDACY AND ON LATER RE-ELECTION; CASE AT BAR.— In this case, the OMB rulings dismissing petitioner for Grave Misconduct had already attained finality on May 28, 2010, which date was even prior to his first election as Punong Barangay of Brgy. Pulung Maragul in the October 2010 Barangay Elections. x x x "[T]he penalty of dismissal [from service] shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for re-employment in the government service, unless otherwise

provided in the decision." Although the principal penalty of dismissal appears to have not been effectively implemented (since petitioner was even able to run and win for two [2] consecutive elections), the corresponding accessory penalty of perpetual disqualification from holding public office had already rendered him ineligible to run for any elective local position. Bearing the same sense as its criminal law counterpart, the term perpetual in this administrative penalty should likewise connote a lifetime restriction and is not dependent on the term of any principal penalty. It is undisputable that this accessory penalty sprung from the same final OMB rulings, and therefore had already attached and consequently, remained effective at the time petitioner filed his CoC on October 11, 2013 and his later re-election in 2013. Therefore, petitioner could not have been validly re-elected so as to avail of the condonation doctrine, unlike in other cases where the condonation doctrine was successfully invoked by virtue of re-elections which overtook and thus, rendered moot and academic pending administrative cases.

5. ID.; ID.; OMNIBUS ELECTION CODE OF THE PHILIPPINES; CERTIFICATE OF CANDIDACY; WHEN THE CERTIFICATE OF CANDIDACY OF A PERSON IS CANCELLED, HE IS DEEMED TO HAVE NOT BEEN A CANDIDATE AND THE VOTES CAST FOR HIM ARE CONSIDERED STRAY VOTES.— A person whose CoC had been cancelled is deemed to have not been a candidate at all because his CoC is considered void *ab initio,* and thus, cannot give rise to a valid candidacy and necessarily to valid votes. The cancellation of the CoC essentially renders the votes cast for him or her as stray votes, and are not considered in determining the winner of an election. This would necessarily invalidate his proclamation and entitle the qualified candidate receiving the highest number of votes to the position. x x x It is likewise imperative for the eligible candidate who garnered the highest number of votes to assume the office.

APPEARANCES OF COUNSEL

G.E. Garcia Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for *certiorari*[1] with urgent prayer for the issuance of a Temporary Restraining Order and/or a Status *Quo Ante* Order and/or a Writ of Preliminary Injunction, assailing the Resolutions dated April 11, 2016[2] and August 31, 2016[3] of respondent Commission on Elections (COMELEC) in SPA No. 13-436 (BRGY) (MP), which cancelled the Certificate of Candidacy (CoC) filed by petitioner Joseph C. Dimapilis (petitioner) for the position of *Punong Barangay* of Barangay Pulung Maragul, Angeles City (Brgy. Pulung Maragul) for the October 28, 2013 Barangay Elections (2013 Barangay Elections), annulled his proclamation as the winner, and directed the Barangay Board of Canvassers to reconvene and proclaim the qualified candidate who obtained the highest number of votes as the duly-elected official for the said post.

The Facts

Petitioner was elected as *Punong Barangay* of Brgy. Pulung Maragul in the October 2010 Barangay Elections. He ran for re-election for the same position in the 2013 Barangay Elections, and filed his CoC[4] on October 11, 2013, declaring under oath that he is "eligible for the office [he seeks] to be elected to." Ultimately, he won in the said elections and was proclaimed as the duly elected *Punong Barangay* of Brgy. Pulung Maragul on October 29, 2013.[5]

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[1] *Rollo,* pp. 8-30.

[2] *Id*. at 34-45. Issued by Presiding Commissioner Al A. Parreño and Commissioners Arthur D. Lim and Sheriff M. Abas.

[3] *Id.* at 46-54. Issued by Chairman J. Andres D. Bautista and Commissioners Christian Robert S. Lim, Al A. Parreño, Luie Tito F. Guia, Arthur D. Lim, Ma. Rowena Amelia V. Guanzon, and Sheriff M. Abas.

[4] *Id*. at 103.

[5] See Certificate of Canvass of Votes and Proclamation of Winning Candidates for *Punong Barangay* and *Kagawad, Sangguniang Barangay; id*. at 181. See also *id*. at 34 and 64.

On even date, the COMELEC Law Department filed a Petition for Disqualification[6] against petitioner pursuant to Section 40 (b)[7] of Republic Act No. 7160,[8] otherwise known as the "Local Government Code of 1991" (LGC). It claimed that petitioner was barred from running in an election[9] since he was suffering from the accessory penalty of perpetual disqualification to hold public office as a consequence of his dismissal from service[10] as then *Kagawad* of Brgy. Pulung Maragul, after being found

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[6] Dated October 25, 2013. *Id.* at 90-102.

[7] Section 40. *Disqualifications.* – The following persons are disqualified from running for any elective local position.

x x x x x x x x x

(b) Those removed from office as a result of an administrative case[.]

[8] Entitled "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991" (October 10, 1991).

[9] See *rollo,* p. 96.

[10] Pursuant to Section 10, Rule III of Administrative Order No. (AO) 07, otherwise known as the "RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN," approved on April 10, 1990, as amended by AO 17-03, entitled "AMENDMENT OF RULE III ADMINISTRATIVE ORDER No. 07," approved on September 15, 2003, which pertinently provides:

Section 10. *Penalties.* — (a) For administrative charges under Executive Order No. 292 or such other executive orders, laws or rules under which the respondent is charged, the penalties provided thereat shall be imposed by the Office of the Ombudsman; (b) in administrative proceedings conducted under these Rules, the Office of the Ombudsman may impose the penalty of reprimand, suspension without pay for a minimum period of one (1) month up to a maximum period of one (1) year, demotion, dismissal from the service, or a fine equivalent to his salary for one (1) month up to one (1) year, or from Five Thousand Pesos (₱5,000.00) to twice the amount malversed, illegally taken or lost, or both, at the discretion of the Ombudsman, taking into consideration circumstances that mitigate or aggravate the liability of the officer or employee found guilty of the complaint or charge.

The penalty of dismissal from the service shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for re-employment in the government service, unless otherwise provided in the decision.

x x x x x x x x x (Emphasis supplied)

guilty, along with others, of the administrative offense of Grave Misconduct, in a Consolidated Decision[11] dated June 23, 2009 (OMB Consolidated Decision) and an Order[12] dated November 10, 2009 (collectively, OMB rulings) rendered by the Office of the Ombudsman (OMB) in OMB-L-A-08-0401-G, and allied cases.[13]

On December 17, 2013, the COMELEC Second Division issued an Order[14] directing petitioner to file his answer.

In his Verified Answer *cum* Memorandum[15] dated February 24, 2014, petitioner averred that the petition should be dismissed, considering that: (*a*) while the petition prayed for his disqualification, it partakes the nature of a petition to deny due course to or cancel CoC under Section 78[16] of the Omnibus Election Code of the Philippines (OEC),[17] and combining these two distinct and separate actions in one petition is a ground for the dismissal of the petition[18] pursuant to the COMELEC Rules of Procedure[19] (COMELEC Rules); (*b*) the COMELEC Law

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[11] *Rollo,* pp. 104-131. Approved by Deputy Ombudsman for Luzon Victor C. Fernandez.

[12] *Id.* at 132-156. Approved by Deputy Ombudsman for Luzon Mark E. Jalandoni.

[13] See *id.* at 91-92.

[14] Not attached to the *rollo.*

[15] *Rollo,* pp. 157-179.

[16] Section 78. *Petition to deny due course to or cancel a certificate of candidacy.* - A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

[17] *Batas Pambansa Blg.* 881 (December 3, 1985).

[18] See *rollo,* pp. 160-165.

[19] Approved on February 15, 1993.

Department is not a proper party to a petition for disqualification, and cannot initiate such case *motu proprio;* [20] and (*c*) the Regional Trial Court of Angeles City, Branch 58 (RTC of Angeles City) had permanently enjoined the implementation of the aforesaid OMB Consolidated Decision in a November 8, 2013 Resolution[21] in Civil Case No. 15325, grounded on the condonation doctrine.[22]

The COMELEC Law Department countered petitioner's averments, maintaining that it has the authority to file *motu proprio* cases, and reiterating its earlier arguments.[23]

On the other hand, the OMB submitted its Comment[24] on April 8, 2014, averring that the OMB rulings had attained finality as early as May 28, 2010 for failure of petitioner to timely appeal to the Court of Appeals (CA), rendering him disqualified from running for any elective position.[25]

The COMELEC Second Division Ruling

In a Resolution[26] dated April 11, 2016, the COMELEC Second Division granted the petition, and cancelled petitioner's CoC, annulled his proclamation as the winner, and directed the Barangay Board of Canvassers to reconvene and proclaim the qualified candidate who garnered the highest number of votes as the duly-elected *Punong Barangay* of Brgy. Pulung Maragul.[27]

It treated the petition as one for cancellation of CoC pursuant to Section 78 of the OEC, notwithstanding that it was captioned as a "Petition for Disqualification" under Section 40 (b) of the LGC, holding that the nature of the petition is not determined by

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[20] See *rollo,* pp. 166-167.

[21] See *id*. at 184-187. Penned by Judge Philbert I. Iturralde.

[22] See *id*. at 159, 168, and 186.

[23] *Id*. at 36.

[24] Not attached to the *rollo.*

[25] See *rollo,* pp. 36 and 38.

[26] *Id*. at 34-45.

[27] *Id*. at 45.

the caption given to it by the parties, but is based on the allegations it presented.[28] It ruled that petitioner committed material misrepresentation in solemnly avowing that he was eligible to run for the office he seeks to be elected to, when he was actually suffering from perpetual disqualification to hold public office by virtue of a final judgment dismissing him from service.[29]

The COMELEC Second Division likewise upheld its Law Department's authority to initiate *motu proprio* the Petition for Disqualifcation as being subsumed under the COMELEC's Constitutional mandate to enforce and administer laws relating to the conduct of elections.[30]

Finally, it rejected petitioner's invocation of the condonation doctrine as jurisprudentially established in *Aguinaldo v. Santos*[31] since the same had already been abandoned in the 2015 case of *Carpio Morales v. Binay, Jr. (Carpio Morales*).[32] It ruled that the doctrine cannot apply to petitioner, who was clearly established to be suffering from perpetual disqualification to hold public office, which rendered him ineligible, voided his CoC from the beginning, and barred his re-election.[33] Consequently, it declared petitioner to be not a candidate at all in the 2013 Barangay Elections; hence, the votes cast in his favor should not be counted.[34]

Petitioner moved for reconsideration,[35] maintaining that: *(a)* the petition should have been outrightly dismissed as the same is a combination of a disqualification case and a petition to deny due course to or cancel CoC, which is proscribed by the

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[28] *Id*. at 38.

[29] *Id*. at 40.

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

[31] G.R. No. 94115, August 21, 1992, 212 SCRA 768.

[32] G.R. Nos. 217126-27, November 10, 2015, 774 SCRA 431.

[33] See *rollo,* pp. 42-44.

[34] *Id*. at 44.

[35] See Verified Motion for Reconsideration dated April 21, 2016; *id*. at 55-73.

COMELEC Rules;[36] *(b)* he was not dismissed or removed from service since the CA had permanently enjoined the execution of the OMB Consolidated Decision in a December 17, 2009 Decision[37] in CA-G.R. SP No. 109986, which was affirmed by this Court in its Resolution[38] dated August 2, 2010 in G.R. No. 192325;[39] *(c)* the RTC of Angeles City, Branch 60 had already dismissed the criminal case against him that was anchored on the same basis as the administrative cases before the OMB, in a November 20, 2015 Order[40] in Criminal Case No. 09-5047;[41] and *(d)* petitioner's re-election as *Punong Barangay* of Brgy. Pulung Maragul in the 2013 Barangay Elections operated as a condonation of his alleged misconduct.[42]

The COMELEC *En Banc* Ruling

In a Resolution[43] dated August 31, 2016, the COMELEC *En Banc* denied petitioner's motion for reconsideration and affirmed the ruling of its Second Division. It explained that petitioner's reliance on the aforesaid CA Decision and RTC Order was misplaced, observing that: *(a)* the evident intent of the CA Decision was only to enjoin the implementation of the OMB Consolidated Decision, while petitioner's motion for reconsideration was pending, and not thereafter;[44] and *(b)*

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[36] *Id*. at 58-59.

[37] *Id*. at 75-80. Penned by Associate Justice (now Member of the Court) Jose Catral Mendoza with Associate Justices Myrna Dimaranan Vidal and Priscilla J. Baltazar-Padilla concurring.

[38] See Second Division Minute Resolution dated August 2, 2010 in G.R. No. 192325 entitled *"OMB v. Josefa [Joseph] C. Dimapilis, et al.," id.* at 83.

[39] See *id*. at 60-61.

[40] *Id*. at 85-88. Penned by Presiding Judge Eda P. Dizon-Era.

[41] See *id*. at 62-64.

[42] See *id*. at 64-67.

[43] See *id*. at 46-54.

[44] See *id*. at 50-52.

absolution from a criminal charge is not a bar to an administrative prosecution and *vice versa.*[45]

Hence, this petition.

The Issues Before the Court

The essential issue for the Court's resolution is whether or not the COMELEC gravely abused its discretion in cancelling petitioner's CoC.

The Court's Ruling

The petition is without merit.

I. Petitioner's perpetual disqualification to hold public office is a material fact involving eligibility.

A CoC is a formal requirement for eligibility to public office.[46] Section 74 of the OEC provides that the CoC of the person filing it shall state, among others, that he is eligible for the office he seeks to run, and that the facts stated therein are true to the best of his knowledge. To be "eligible" relates to the capacity of holding, as well as that of being elected to an office.[47] Conversely, "ineligibility" has been defined as a "disqualification or legal incapacity to be elected to an office or appointed to a particular position."[48] In this relation, **a person intending to run for public office must not only possess the required qualifications for the position for which he or she intends to run, but must also possess none of the grounds for disqualification under the law.**[49]

In this case, petitioner had been found guilty of Grave Misconduct by a final judgment, and punished with dismissal

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[45] *Id*. at 53.

[46] Bellosillo, Marquez and Mapili, *Effective Litigation & Adjudication of Election Contests*, 2012 Ed., p. 47.

[47] See Concurring and Dissenting Opinion of Associate Justice Jose Catral Mendoza in *Talaga v. COMELEC,* 696 Phil. 786, 890 (2012), citing *Bouvier's Law Dictionary,* Vol. I, 8th Ed., p. 1002.

[48] *Id*. See also *Black's Law Dictionary,* 6th Ed., p. 776.

[49] See *Chua v. COMELEC,* G.R. No. 216607, April 5, 2016.

from service with all its accessory penalties, including perpetual disqualification from holding public office.[50] Verily, **perpetual disqualification to hold public office is a material fact involving eligibility**[51] which rendered petitioner's CoC void from the start since he was not eligible to run for any public office at the time he filed the same.

II. The COMELEC has the duty to *motu proprio* bar from running for public office those suffering from perpetual disqualification to hold public office.

Under Section 2 (1), Article IX (C) of the 1987 Constitution, the COMELEC has the duty to "[e]nforce and administer all laws and regulations relative to the conduct of an election x x x." The Court had previously ruled that **the COMELEC has the legal duty to cancel the CoC of anyone suffering from the accessory penalty of perpetual disqualification to hold public office,** albeit, arising from a criminal conviction.[52] Considering, however, that Section 52 (a), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service similarly imposes the penalty of perpetual disqualification from holding public office as an accessory to the penalty of dismissal from service, the Court sees no reason why the ratiocination enunciated in such earlier criminal case should not apply here, *viz.*:

> Even without a petition under either x x x Section 78 of the Omnibus Election Code, or under Section 40 of the Local Government Code, **the COMELEC is under a legal duty to cancel the certificate of candidacy of anyone suffering from the accessory penalty of perpetual special disqualification to run for public office by virtue of a final judgment** of conviction. The final judgment of conviction is notice to the COMELEC of the disqualification of the convict from running for public office. The law itself bars the convict from running for public office, and the disqualification is part of the final

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[50] See Section 52 (a), Rule 10 of the REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, promulgated on November 18, 2011.

[51] See *Jalosjos, Jr. v. COMELEC,* 696 Phil. 601, 622-623 (2012).

[52] *Id*. at 634. See also *Aratea v. COMELEC,* 696 Phil. 700, 738 (2012).

judgment of conviction. The final judgment of the court is addressed not only to the Executive branch, but also to other government agencies tasked to implement the final judgment under the law.

Whether or not the COMELEC is expressly mentioned in the judgment to implement the disqualification, it is assumed that the portion of the final judgment on disqualification to run for elective public office is addressed to the COMELEC because under the Constitution the COMELEC is duty bound to "[e]nforce and administer all laws and regulations relative to the conduct of an election." The disqualification of a convict to run for public office under the Revised Penal Code, as affirmed by final judgment of a competent court, is part of the enforcement and administration of "all laws" relating to the conduct of elections.

To allow the COMELEC to wait for a person to file a petition to cancel the certificate of candidacy of one suffering from perpetual special disqualification will result in the anomaly that these cases so grotesquely exemplify. Despite a prior perpetual special disqualification, Jalosjos was elected and served twice as mayor. **The COMELEC will be grossly remiss in its constitutional duty to "enforce and administer all laws" relating to the conduct of elections if it does not *motu proprio* bar from running for public office those suffering from perpetual special disqualification by virtue of a final judgment.**[53] (Emphases and underscoring supplied)

In *Romeo G. Jalosjos v. COMELEC*[54] *(Jalosjos*), the Court had illumined that while the denial of due course to and/or cancellation of one's CoC generally necessitates the exercise of the COMELEC's quasi-judicial functions commenced through a petition based **on either Sections 12 or 78 of the OEC, or Section 40 of the LGC, *when the grounds therefor are rendered conclusive on account of final and executory judgments, as in this case, such exercise falls within the COMELEC's administrative functions.***[55] To note, the choice as to which action to commence belongs to the petitioner:

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[53] *Id*. at 634-635.

[54] 711 Phil. 414 (2013).

[55] *Id*. at 425-426.

What is indisputably clear is that the false material representation of Jalosjos is a ground for a petition under Section 78. However, since the false material representation arises from a crime penalized by *prisión mayor,* a petition under Section 12 of the Omnibus Election Code or Section 40 of the Local Government Code can also be properly filed. The petitioner has a choice whether to anchor his petition on Section 12 or Section 78 of the Omnibus Election Code, or on Section 40 of the Local Government Code. The law expressly provides multiple remedies and the choice of which remedy to adopt belongs to the petitioner.[56]

As petitioner's disqualification to run for public office pursuant to the final and executory OMB rulings dismissing him from service now stands beyond dispute, ***it is incumbent upon the COMELEC to cancel petitioner's CoC as a matter of course,*** else it be remiss in fulfilling its Constitutional duty to enforce and administer all laws and regulations relative to the conduct of an election.

Accordingly, the Court finds no merit to petitioner's claim[57] of denial of due process because even though the special circumstance extant herein calls for the outright cancellation of his CoC in the exercise of the COMELEC's administrative function, it even allowed him to submit his Verified Answer *cum* Memorandum to explain his side, and to file a motion for reconsideration from its resolution.

III. Petitioner's re-election as *Punong Barangay* of Brgy. Pulung Maragul in the 2013 Barangay Elections cannot operate as a condonation of his alleged misconduct.

In *Carpio Morales,* the Court abandoned the "condonation doctrine," explaining that "[e]lection is not a mode of condoning an administrative offense, and there is simply no constitutional or statutory basis in our jurisdiction to support the notion that an official elected for a different term is fully absolved of any

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[56] *Jalosjos, Jr. v. COMELEC, supra* note 51, at 632.

[57] See *rollo,* pp. 17-20.

administrative liability arising from an offense done during a prior term."[58]

Although *Carpio Morales* clarified that such abandonment should be prospectively applied[59] (thus, treating the condonation doctrine as "good law" when the COMELEC's petition was commenced on October 29, 2013, and when petitioner filed his Verified Answer *cum* Memorandum invoking the same), the parameters for the operation of such doctrine simply do not obtain in petitioner's favor.

Prior to *Carpio Morales,* the Court, in the 1996 case of *Reyes v. COMELEC*[60] *(Reyes),* had illumined that the rationale in the *Aguinaldo* cases[61] was hinged on the expiration of the term of office during which the misconduct was committed before a decision could be rendered in the administrative case seeking the candidate's removal. As such, his or her re-election bars removal for said misconduct since removal cannot extend beyond the term when the misconduct was committed.[62] *Reyes* likewise noted that the *Aguinaldo* cases involved a misconduct committed prior to the enactment of the LGC, and there was no existing provision similar to Section 40 (b), disqualifying a person from running for any elective local position as a consequence of his removal from office as a result of an administrative case.[63] Thus, it rejected petitioner's invocation of the condonation doctrine, holding that:

Second. The next question is whether the reelection of petitioner rendered the administrative charges against him moot and academic. Petitioner invokes the ruling in *Aguinaldo v. COMELEC* [(see supra note 31)], in which it was held that a public official could not be

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[58] *Carpio Morales, supra* note 32.

[59] *Id*. at 558.

[60] 324 Phil. 813 (1996).

[61] See discussion in *Aguinaldo v. Santos, supra* note 31, at 771-772.

[62] See *Reyes, supra* note 60, at 826.

[63] *Id*. at 827.

removed for misconduct committed during a prior term and that his reelection operated as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor. But that was because in that case, **before the petition questioning the validity of the administrative decision removing petitioner could be decided, the term of office during which the alleged misconduct was committed expired. Removal cannot extend beyond the term during which the alleged misconduct was committed. If a public official is not removed before his term of office expires, he can no longer be removed if he is thereafter reelected for another term.** This is the rationale for the ruling in the two *Aguinaldo* cases.

The case at bar is the very opposite of those cases. Here, although petitioner Reyes brought an action to question the decision in the administrative case, the temporary restraining order issued in the action he brought lapsed, with the result that **the decision was served on petitioner and it thereafter became final on April 3, 1995, because petitioner failed to appeal to the Office of the President. He was thus validly removed from office and, pursuant to Section 40 (b) of the Local Government Code, he was disqualified from running for reelection.**

It is noteworthy that at the time the *Aguinaldo* cases were decided there was no provision similar to Section 40 (b) which disqualifies any person from running for any elective position on the ground that he has been removed as a result of an administrative case. The Local Government Code of 1991 x x x could not be given retroactive effect. x x x.[64]

x x x x x x x x x (Emphases supplied; citations omitted)

In this case, the OMB rulings dismissing petitioner for Grave Misconduct had already attained finality on May 28, 2010, which date was even prior to his first election as Punong Barangay of Brgy. Pulung Maragul in the October 2010 Barangay Elections. As above-stated, "[t]he penalty of dismissal [from service] shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for re-employment in the government service, unless otherwise

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[64] *Id*. at 826-827.

provided in the decision."[65] Although the principal penalty of dismissal appears to have not been effectively implemented (since petitioner was even able to run and win for two [2] consecutive elections), the corresponding accessory penalty of perpetual disqualification from holding public office had already rendered him ineligible to run for any elective local position. Bearing the same sense as its criminal law counterpart,[66] the term perpetual in this administrative penalty should likewise connote a lifetime restriction and is not dependent on the term of any principal penalty. It is undisputable that this accessory penalty sprung from the same final OMB rulings, and therefore had already attached and consequently, remained effective at the time petitioner filed his CoC on October 11, 2013 and his later re-election in 2013. Therefore, petitioner could not have been validly re-elected so as to avail of the condonation doctrine, unlike in other cases where the condonation doctrine was successfully invoked[67] by virtue of re-elections which overtook and thus, rendered moot and academic pending administrative cases.

IV. With the cancellation of his CoC, petitioner is deemed to have not been a candidate in the 2013 Barangay Elections, and all his votes are to be considered stray votes.

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[65] Pursuant to Section 10, Rule III of AO 07, as amended by AO 17-03.

[66] See *Jalosjos, supra* note 54.

[67] In *Lingating v. COMELEC,* November 13, 2002 (440 Phil. 308 [2002]); *Aguinaldo v. Santos, supra* note 31; and *Lizares v. Hechanova* (123 Phil. 916 [1966]), the public officials therein were administratively charged for the acts they committed during their previous term and were initially adjudged to be liable; however, during the pendency of their motions for reconsideration or appeal, the public officials were re-elected into the same office, which, thus, rendered moot and academic the pending charges against them. *Cf Reyes v. COMELEC,* March 7, 1996 (*supra* note 60) wherein the Court ruled that the condonation doctrine was inapplicable to Reyes, considering that the *Sangguniang Panlalawigan* Ruling dated February 6, 1995 became final before the Court could finally resolve the case. See also Silos, Miguel U., A Re-examination of the Doctrine of Condonation of Public Officers, 84, Phil. LJ 22, 69 (2009), pp. 49-57.

A person whose CoC had been cancelled is deemed to have not been a candidate at all because his CoC is considered void *ab initio,* and thus, cannot give rise to a valid candidacy and necessarily to valid votes.[68] The cancellation of the CoC essentially renders the votes cast for him or her as stray votes,[69] and are not considered in determining the winner of an election.[70] This would necessarily invalidate his proclamation[71] and entitle the qualified candidate receiving the highest number of votes to the position.[72] Apropos is the Court's ruling in *Maquiling v. COMELEC,*[73] to wit:

> As in any contest, elections are governed by rules that determine the qualifications and disqualifications of those who are allowed to participate as players. **When there are participants who turn out to be ineligible, their victory is voided and the laurel is awarded to the next in rank who does not possess any of the disqualifications nor lacks any of the qualifications set in the rules to be eligible as candidates.**
>
> x x x x x x x x x
>
> x x x The second-placer in the vote count is actually the first-placer among the qualified candidates.
>
> That the disqualified candidate has already been proclaimed and has assumed office is of no moment. The subsequent disqualification based on a substantive ground that existed prior to the filing of the certificate of candidacy voids not only the COC but also the proclamation.[74] (Emphasis supplied)

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[68] *Aratea v. COMELEC, supra* note 52, at 739.

[69] See Section 9, Rule 23 of the COMELEC Rules of Procedure, as amended by Resolution No. 9523, entitled "IN THE MATTER OF THE AMENDMENT TO RULES 23, 24, AND 25 OF THE COMELEC RULES OF PROCEDURE FOR PURPOSES OF THE 13 MAY 2013 NATIONAL, LOCAL AND ARMM ELECTIONS AND SUBSEQUENT ELECTIONS," promulgated on September 25, 2012.

[70] *Maquiling v. COMELEC,* 709 Phil. 408, 447 (2013).

[71] See *Hayudini v. COMELEC,* 733 Phil. 822, 845-846 (2014).

[72] *Aratea v. COMELEC, supra* note 52, at 740.

[73] *Supra* note 70, at 447-448.

[74] *Id*. at 448.

In light of the cancellation of petitioner's CoC due to ineligibility existing at the time of filing, he was never a valid candidate for the position of *Punong Barangay* of Brgy. Pulung Maragul in the 2013 Barangay Elections, and the votes cast for him are considered stray votes. Thus, the qualified candidate for the said post who received the highest number of valid votes shall be proclaimed the winner.[75]

It is likewise imperative for the eligible candidate who garnered the highest number of votes to assume the office. In *Svetlana P. Jalosjos v. COMELEC,*[76] the Court explained:

> There is another more compelling reason why the eligible candidate who garnered the highest number of votes must assume the office. The ineligible candidate who was proclaimed and who already assumed office is a *de facto* officer by virtue of the ineligibility.
>
> The rule on succession in Section 44 of the Local Government Code cannot apply in instances when a *de facto* officer is ousted from office and the *de jure* officer takes over. The ouster of a *de facto* officer cannot create a permanent vacancy as contemplated in the Local Government Code. There is no vacancy to speak of as the *de jure* officer, the rightful winner in the elections, has the legal right to assume the position.[77]

WHEREFORE, the petition is **DISMISSED.** The Resolutions dated April 11, 2016 and August 31, 2016 of respondent the Commission on Elections in SPA No. 13-436 (BRGY) (MP) are hereby **AFFIRMED.** Petitioner Joseph C. Dimapilis is **ORDERED** to cease and desist from discharging the functions of the *Punong Barangay* of Barangay Pulung Maragul, Angeles City.

SO ORDERED.

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

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[75] Consonant with the Court's ruling in *Jalosjos, Jr. v. COMELEC* (*supra* note 51, at 635) and *Aratea v. COMELEC* (*supra* note 52, at 740).

[76] 712 Phil. 177 (2013).

[77] *Id.* at 190-191.

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whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief. (*Id*.)

ACTS OF LASCIVIOUSNESS AGAINST A CHILD UNDER R.A. NO.7610

Commission of — Before an accused can be held criminally liable for lascivious conduct under Sec. 5(b) of R.A. No. 7610, the requisites of Acts of Lasciviousness as penalized under Art. 336 of the RPC xxx must be met in addition to the requisites for sexual abuse under Sec. 5(b) of R.A. No. 7610, which are as follows: "1. The accused commits the act of sexual intercourse or lascivious conduct; 2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and 3. That child, whether male or female, is below 18 years of age." (Quimvel *y* Braga *vs.* People, G.R. No. 214497, April 18, 2017) p. 889

— The law punishes not only child prostitution but also other forms of sexual abuse against children; definition of the phrase "exploited in prostitution or subject to other sexual abuse" in Sec. 5 of R.A. No. 7610, which encompasses children who indulge in sexual intercourse or lascivious conduct: (a) for money, profit, or any other consideration; or (b) under the coercion or influence of any adult, syndicate or group; explained. (*Id*.)

ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336

Elements — Conviction under Art. 336 of the RPC requires that the prosecution establish the following elements: "1. That the offender commits any act of lasciviousness or lewdness; 2. That it is done under any of the following circumstances: a) Through force, threat, or intimidation; b) When the offended party is deprived of reason or

revoked if a bilateral contract depends upon it, or if it is the means of fulfilling an obligation already contracted, or if a partner is appointed manager of a partnership in the contract of partnership and his removal from the management is unjustifiable; a bilateral contract that depends upon the agency is considered an agency coupled with an interest, making it an exception to the general rule of revocability at will.(*Id.*)

AGGRAVATING CIRCUMSTANCES

Disguise — Disguise was likewise correctly appreciated as an aggravating circumstance. (People *vs.* Sibbu, G.R. No. 214757, Mar. 29, 2017) p. 276

Dwelling — Although the triggerman fired the shot from outside the house, his victim was inside; for this circumstance to be considered it is not necessary that the accused should have actually entered the dwelling of the victim to commit the offense; it is enough that the victim was attacked inside his own house, although the assailant may have devised means to perpetrate the assault from without. (People *vs.* Sibbu, G.R. No. 214757, Mar. 29, 2017) p. 276

AGRICULTURAL LAND REFORM CODE

Application of — In case the landholding is sold to a third person without the knowledge of the agricultural lessee, the latter shall have the right to redeem the same at a reasonable price and consideration, provided, that the entire landholding sold must be redeemed; however, in view of its amendment by Sec. 12 of R.A. No. 6389, the caveat now reads; provided, that where there are two or more agricultural lessees, each shall be entitled to said right of redemption only to the extent of the area actually cultivated by him. (SM Systems Corp. [Formerly Springsun Mgmt. Systems Corp.] *vs.* Camerino, G.R. No. 178591, Mar. 29, 2017) p. 96

were declared outside the coverage of the Comprehensive Agrarian Reform Law. (*Id*.)

— R.A. No. 6657 never required that a landholding must be exclusively used for agricultural purposes to be covered by the Comprehensive Agrarian Reform Program; what determines a tract of land's inclusion in the program is its suitability for any agricultural activity. (*Id*.)

— The definition of a "farmlot subdivision" under the HLURB Rules and Regulations Implementing Farmlot Subdivision Plan (HLURB Regulations) leaves no doubt that it is an "agricultural land" as defined under R.A. No. 3844. (*Id*.)

Application of —The Comprehensive Agrarian Reform Program covers the following lands: (1) all alienable and disposable lands of the public domain devoted to or suitable for agriculture; (2) all lands of the public domain exceeding the total area of five hectares and below to be retained by the landowner; (3) all government-owned lands that are devoted to or suitable for agriculture; and (4) all private lands devoted to or suitable for agriculture, regardless of the agricultural products raised or can be raised on these lands. (Heirs of Salas, Jr., *vs.* Cabungcal, G.R. No. 191545, Mar. 29, 2017) p. 138

Just compensation — The consideration of the valuation factors under Sec.17 of R.A. No. 6657 and the formula under DAR A.O. No. 05-98 is mandatory in ascertaining just compensation for purposes of agrarian reform cases; although the determination of just compensation is fundamentally a judicial function vested in the RTC, the judge must still exercise his discretion within the bounds of law; he ought to take into *full consideration* the factors specifically identified in R.A. No. 6657 and its implementing rules, as contained under the pertinent Administrative Orders of the DAR, such as DAR A.O. No. 05-98, which contains the basic formula of the factors enumerated under said law. (Land Bank of the Phils. *vs.* Sps. Chu, G.R. No. 192345, Mar. 29, 2017) p. 179

CRIMINAL PROCEDURE

Parties — Private complainant has no legal personality to assail the dismissal of the criminal case against the accused. (Remulla *vs*. Sandiganbayan (Second Div.), G.R. No. 218040, April 17, 2017) p. 739

Prosecution of offenses — All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor; however, in Municipal Trial Courts or Municipal Circuit Trial Courts when the prosecutor assigned thereto or to the case is not available, the offended party, any peace officer, or public officer charged with the enforcement of the law violated may prosecute the case; this authority shall cease upon actual intervention of the prosecutor or upon elevation of the case to the Regional Trial Court. (Valderrama *vs.* People, G.R. No. 220054, Mar. 27, 2017) p. 70

DAMAGES

Exemplary damages and attorney's fees — As regards exemplary damages, it is settled that to warrant its award, the wrongful act must be accompanied by bad faith, and the guilty party acted in a wanton, fraudulent, reckless or malevolent manner; attorney's fees, on the other hand, is proper only if a party was forced to litigate and incur expenses to protect his right and interest by reason of an unjustified act or omission of the party for whom it is sought; the award of attorney's fees is more of an exception than the general rule, since it is not sound policy to place a penalty on the right to litigate. (Peralta *vs.* Raval, G.R. No. 188467, Mar. 29, 2017) p. 115

Moral damages — Bad faith imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud; it is a question of intention, which can be inferred from one's conduct and/or contemporaneous statements. (Peralta *vs.* Raval, G.R. No. 188467, Mar. 29, 2017) p. 115

LEASE

Contract of — On the matter of rescission of lease agreements, Art. 1659 of the NCC applies as a rule; Art. 1654 referred to in Art. 1659 pertains to the obligations of a lessor in a lease agreement; Art. 1657, on the other hand, enumerates the obligations of a lessee; given the rules that exclusively apply to leases, the other provisions of the NCC that deal with the issue of rescission may not be applicable to contracts of lease. (Peralta *vs.* Raval, G.R. No. 188467, Mar. 29, 2017) p. 115

— Under Art. 1659 of the NCC, an aggrieved party in a lease contract may ask for any of the following remedies: (1) the rescission of the contract; (2) rescission and indemnification for damages; and (3) only indemnification for damages, allowing the contract to remain in force. (*Id*.)

— While petitioner can no longer be directed to vacate the subject property since he is already a co-owner, he is still bound to pay the unpaid rentals and reasonable rent for the use and possession of the property, both with interest, for the period when he was a mere lessee. (Uy [Cabangbang Store] *vs*. Estate of Vipa Fernandez, G.R. No. 200612, April 5, 2017) p. 470

MALVERSATION

Elements — The elements of malversation are that: (a) the offender is an accountable public officer; (b) he/she is responsible for the misappropriation of public funds or property through intent or negligence; and (c) he/she has custody of and received such funds and property by reason of his/her office. (Macapagal-Arroyo *vs*. People, G.R. No. 220598, April 18, 2017) p. 1042

MANDAMUS

Concept — In view of supervening circumstances which preclude the satisfaction of the reliefs prayed for, respondent's *mandamus* petition should also be dismissed on the ground

PRELIMINARY INVESTIGATION

Probable cause — Defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed, and that objects sought in connection with the offense are in the place sought to be searched; the probable cause must be determined personally by the judge, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. (People *vs.* Gayoso *y* Arguelles, G.R. No. 206590, Mar. 27, 2017) p. 19

PRE-TRIAL

Failure of a party to appear — Failure of the plaintiff to appear at the pre-trial resulted in the dismissal of the complaint; explained. (Domingo *vs.* Sps. Singson, G.R. No. 203287, April 5, 2017) p. 488

— The failure of a party to appear at the pre-trial has adverse consequences; if the absent party is the plaintiff, then his case shall be dismissed, which shall be with prejudice, unless otherwise ordered by the court; if it is the defendant who fails to appear, then the plaintiff is allowed to present his evidence *ex parte* and the court shall render judgment on the basis thereof. (*Id.*)

Failure to appear — Effects of failure to appear at pre-trial; instances when non-appearance of a party and counsel may be excused. (Ultra Mar Aqua Resource, Inc. *vs.* Fermida Construction Services, G.R. No. 191353, April 17, 2017) p. 648

— Where the justifications advanced by petitioner's counsel for its failure to appear at the pre-trial was not a valid cause, petitioner and its counsel cannot evade the effects of their misfeasance; negligence of the counsel binds the client. (*Id.*)

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